HALSBURY'S LAWS OF ENGLAND

Fourth Edition

Additional Materials

Local Government: Finance

Taken from Fourth Edition Volume

29(1)

Local Government

(Local Government Finance)

HALSBURY'S
Laws of England

FOURTH EDITION
2009

Additional Materials:
Local Government Finance

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July 2009

HALSBURY'S Laws of England

FOURTH EDITION

LORD MACKAY OF CLASHFERN
Lord High Chancellor of Great Britain
1987–97

Additional Materials: Local Government Finance

2009

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THE RIGHT HONOURABLE

LORD MACKAY OF CLASHFERN

LORD HIGH CHANCELLOR OF GREAT BRITAIN

1987–97

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LOCAL GOVERNMENT

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This volume has been prepared on the basis that the Local Government Act 2000 is in force to the extent that it will actually be in force on 28 July 2001. In other respects, the law stated in this volume is in general that in force on 1 June 2001, although subsequent changes have been included wherever possible.

Any subsequent and future updating material will be found in the Current Service and annual Cumulative Supplement to Halsbury's Laws of England.

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HOW TO USE HALSBURY'S LAWS OF ENGLAND

Volumes

Each text volume of Halsbury's Laws of England contains the law on the titles contained in it as at a date stated at the front of the volume (the operative date).

Information contained in Halsbury's Laws of England may be accessed in several ways.

First, by using the tables of contents.

Each volume contains both a general Table of Contents, and a specific Table of Contents for each title contained in it. From these tables you will be directed to the relevant part of the work.

Readers should note that the current arrangement of titles can be found in the Current Service.

Secondly, by using tables of statutes, statutory instruments, cases or other materials.

If you know the name of the Act, statutory instrument or case with which your research is concerned, you should consult the Consolidated Tables of statutes, cases and so on (published as separate volumes) which will direct you to the relevant volume and paragraph. The Consolidated Tables will indicate if the volume referred to is a Fifth Edition volume.

(Each individual text volume also includes tables of those materials used as authority in that volume.)

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Additional Materials

The reorganisation of the title scheme of *Halsbury's Laws* for the Fifth Edition means that from time to time Fourth Edition volumes will be *partially* replaced by Fifth Edition volumes.

In certain instances an *Additional Materials* softbound book will be issued, in which will be reproduced material which has not yet been replaced by a Fifth Edition title. This will enable users to remove specific Fourth Edition

volumes from the shelf and save valuable space pending the replacement of that material in the Fifth Edition. These softbound books are supplied to volumes subscribers free of charge. They continue to form part of the set of Halsbury's Laws Fourth Edition Reissue, and will be updated by the Annual Cumulative Supplement and monthly Noter-up in the usual way.

This *Additional Materials* softbound book contains material relating to local government finance, reproduced from the Fourth Edition (Reissue) title LOCAL GOVERNMENT. This material was not included in the Fifth Edition title LOCAL GOVERNMENT, and will form part of the Fifth Edition title LOCAL GOVERNMENT FINANCE.

Updating publications

The text volumes of Halsbury's Laws should be used in conjunction with the annual Cumulative Supplement and the monthly Noter-Up.

The annual Cumulative Supplement

The Supplement gives details of all changes between the operative date of the text volume and the operative date of the Supplement. It is arranged in the same volume, title and paragraph order as the text volumes. Developments affecting particular points of law are noted to the relevant paragraph(s) of the text volumes. As from the commencement of the Fifth Edition, the Supplement will clearly distinguish between Fourth and Fifth Edition titles.

For narrative treatment of material noted in the Cumulative Supplement, go to the Annual Abridgment volume for the relevant year.

Destination Tables

In certain titles in the annual *Cumulative Supplement*, reference is made to Destination Tables showing the destination of consolidated legislation. Those Destination Tables are to be found either at the end of the titles within the annual *Cumulative Supplement*, or in a separate *Destination Tables* booklet provided from time to time with the *Cumulative Supplement*.

The Noter-Up

The Noter-Up is contained in the Current Service Noter-Up booklet, issued monthly and noting changes since the publication of the annual Cumulative Supplement. Also arranged in the same volume, title and paragraph order as the text volumes, the Noter-Up follows the style of the Cumulative Supplement. As from the commencement of the Fifth Edition, the Noter-Up will clearly distinguish between Fourth and Fifth Edition titles.

For narrative treatment of material noted in the Noter-Up, go to the relevant Monthly Review.

REFERENCES AND ABBREVIATIONS

ACT	Australian Capital Territory
A-G	Attorney General
Admin	Administrative Court
Admlty	Admiralty Court
Adv-Gen	Advocate General
affd	affirmed
affg	affirming
Alta	Alberta
App	Appendix
art	article
Aust	Australia
B	Baron
BC	British Columbia
C	Command Paper (of a series published before 1900)
c	chapter number of an Act
CA	Court of Appeal
CAC	Central Arbitration Committee
CA in Ch	Court of Appeal in Chancery
CB	Chief Baron
CCA	Court of Criminal Appeal
CCR	County Court Rules 1981 (SI 1981/1687) as subsequently amended
CCR	Court for Crown Cases Reserved
C-MAC	Courts-Martial Appeal Court
CO	Crown Office
COD	Crown Office Digest
CPR	Civil Procedure Rules 1998 (SI 1998/3132) as subsequently amended (see the Civil Court Practice)
Can	Canada
Cd	Command Paper (of the series published 1900–18)
Cf	compare
Ch	Chancery Division
ch	chapter
cl	clause

Cm	Command Paper (of the series published 1986 to date)
Cmd	Command Paper (of the series published 1919–56)
Cmnd	Command Paper (of the series published 1956–86)
Comm	Commercial Court
Comr	Commissioner
Court Forms (2nd Edn)	Atkin's Encyclopaedia of Court Forms in Civil Proceedings, 2nd Edn. See note 2 post.
Court Funds Rules 1987	Court Funds Rules 1987 (SI 1987/821) as subsequently amended
DC	Divisional Court
DPP	Director of Public Prosecutions
EAT	Employment Appeal Tribunal
EC	European Community
ECJ	Court of Justice of the European Community
EComHR	European Commission of Human Rights
ECSC	European Coal and Steel Community
ECtHR Rules of Court	Rules of Court of the European Court of Human Rights
EEC	European Economic Community
EFTA	European Free Trade Association
EWCA Civ	Official neutral citation for judgments of the Court of Appeal (Civil Division)
EWCA Crim	Official neutral citation for judgments of the Court of Appeal (Criminal Division)
EWHC	Official neutral citation for judgments of the High Court
Edn	Edition
Euratom	European Atomic Energy Community
Ex Ch	Court of Exchequer Chamber
ex p	ex parte
Fam	Family Division
Fed	Federal
Forms & Precedents (5th Edn)	Encyclopaedia of Forms and Precedents other than Court Forms, 5th Edn. See note 2 post.
GLC	Greater London Council
HC	High Court
HC	House of Commons
HK	Hong Kong
HL	House of Lords

IAT	Immigration Appeal Tribunal
ILM	International Legal Materials
INLR	Immigration and Nationality Law Reports
IRC	Inland Revenue Commissioners
Ind	India
Int Rels	International Relations
Ir	Ireland
J	Justice
JA	Judge of Appeal
Kan	Kansas
LA	Lord Advocate
LC	Lord Chancellor
LCC	London County Council
LCJ	Lord Chief Justice
LJ	Lord Justice of Appeal
LoN	League of Nations
MR	Master of the Rolls
Man	Manitoba
n	note
NB	New Brunswick
NI	Northern Ireland
NS	Nova Scotia
NSW	New South Wales
NY	New York
NZ	New Zealand
OHIM	Office for Harmonisation in the Internal Market
OJ	The Official Journal of the European Community published by the Office for Official Publications of the European Community
Ont	Ontario
P	President
PC	Judicial Committee of the Privy Council
PEI	Prince Edward Island
Pat	Patents Court
q	question
QB	Queen's Bench Division
QBD	Queen's Bench Division of the High Court
Qld	Queensland
Que	Quebec
r	rule
RDC	Rural District Council
RPC	Restrictive Practices Court

RSC	Rules of the Supreme Court 1965 (SI 1965/1776) as subsequently amended
reg	regulation
Res	Resolution
revsd	reversed
Rly	Railway
s	section
SA	South Africa
S Aust	South Australia
SC	Supreme Court
SI	Statutory Instruments published by authority
SR & O	Statutory Rules and Orders published by authority
SR & O Rev 1904	Revised Edition comprising all Public and General Statutory Rules and Orders in force on 31 December 1903
SR & O Rev 1948	Revised Edition comprising all Public and General Statutory Rules and Orders and Statutory Instruments in force on 31 December 1948
SRNI	Statutory Rules of Northern Ireland
STI	Simon's Tax Intelligence (1973–1995); Simon's Weekly Tax Intelligence (1996-current)
Sask	Saskatchewan
Sch	Schedule
Sess	Session
Sing	Singapore
TCC	Technology and Construction Court
TS	Treaty Series
Tanz	Tanzania
Tas	Tasmania
UDC	Urban District Council
UKHL	Official neutral citation for judgments of the House of Lords
UKPC	Official neutral citation for judgments of the Privy Council
UN	United Nations
V-C	Vice-Chancellor
Vict	Victoria
W Aust	Western Australia
Zimb	Zimbabwe

NOTE 1. A general list of the abbreviations of law reports and other sources used in this work can be found at the beginning of the Consolidated Table of Cases.

NOTE 2. Where references are made to other publications, the volume number precedes and the page number follows the name of the publication; eg the reference '12 Forms & Precedents (5th Edn) 44' refers to volume 12 of the Encyclopaedia of Forms and Precedents, page 44.

NOTE 3. An English statute is cited by short title or, where there is no short title, by regnal year and chapter number together with the name by which it is commonly known or a description of its subject matter and date. In the case of a foreign statute, the mode of citation generally follows the style of citation in use in the country concerned with the addition, where necessary, of the name of the country in parentheses.

NOTE 4. A statutory instrument is cited by short title, if any, followed by the year and number, or, if unnumbered, the date.

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9. LOCAL GOVERNMENT FINANCE

(1) INTRODUCTION

514. Legal status of local authorities in financial matters. Local authorities[1] have independent status as distinct corporate bodies[2], subject to the direction, control and supervision of Ministers of the Crown to the extent authorised by Parliament[3]. This status is reflected in relation to finance in that each individual local authority is responsible for making arrangements for the proper administration of its own finances[4]. The rule of law by which the powers of a statutory corporation are limited to those functions expressly or impliedly conferred by Parliament[5] is of paramount importance in confining expenditure to authorised purposes[6].

A local authority is subject to ministerial control in that: (1) consents are required for borrowing money[7]; (2) directions may limit expenditure, where enactments provide for such limits by reference to a minister's direction or prescription[8]; and (3) there are requirements as to accounts[9], audit[10] and returns of financial information[11].

1 For the meaning of 'local authority' see para 24 ante.
2 As to the independent status of local authorities see para 1 ante.
3 As to supervision of local authorities by Ministers of the Crown see the text and notes 7–11 infra; and para 105 et seq ante.
4 See the Local Government Act 1972 s 151; and para 624 post.
5 See paras 408–409 ante.
6 If the expenditure is for an unauthorised purpose, the authority may be restrained by injunction: see *A-G v Aspinall* (1837) 2 My & Cr 613; *A-G v Norwich Corpn* (1837) 2 My & Cr 406; *A-G v Newcastle-upon-Tyne Corpn and North Eastern Rly Co* (1889) 23 QBD 492, CA (affd [1892] AC 568, HL); *A-G v Manchester Corpn* [1906] 1 Ch 643; *A-G v De Winton* [1906] 2 Ch 106; *A-G v West Ham Corpn* [1910] 2 Ch 560. However, the doing of things calculated to facilitate, or conducive or incidental to the discharge of functions is specifically authorised by the Local Government Act 1972 s 111(1): see paras 332 ante, 518 post. See also *A-G v Smethwick Corpn* [1932] 1 Ch 562, CA.
7 See the Local Government and Housing Act 1989 s 43; and para 594 et seq post.
8 See eg the Local Government Act 1972 s 137 (as amended); and para 519 post.
9 As to accounts see para 628 et seq post.
10 As to audit see para 653 et seq post.
11 As to returns of financial arrangements see para 634 post.

515. Commutation of, and interest on, periodic payments of grants, etc. Where the Secretary of State[1] has a power or duty to make any annual or other periodic payment by way of contribution, grant or subsidy towards expenditure incurred or to be incurred by a local authority[2], he may commute such payments[3] which would otherwise fall due on or after 1 April 1990 either into a single payment or into a lesser number of payments than would otherwise be payable[4]. He may also, if he thinks it appropriate, pay to the Public Works Loans Commissioners, in whole or in part, any single or other payment so as to reduce or extinguish the authority's debt to the commissioners[5].

If, after a commuted payment has been made to a local authority or to the Public Works Loans Commissioners, it appears to the Secretary of State that the payment was smaller or greater than it should have been (whether by miscalculation or otherwise), he may make a further payment to the authority or the commissioners[6], or require the authority to repay him such sum as he may direct[7].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

2 Ie a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, the Receiver for the Metropolitan Police District (see POLICE vol 36(1) (Reissue) para 335), a police authority established under the Police Act 1996 s 3 (see POLICE vol 36(1) (Reissue) para 316 et seq), the Service Authority for the National Crime Squad (see POLICE vol 36(1) (Reissue) para 261 et seq), a joint authority established by the Local Government Act 1985 Pt IV (ss 23–42) (as amended) (see para 53 et seq ante), and a residuary body established under Pt VII (ss 57–67) (as amended): Local Government and Housing Act 1989 s 157(6) (amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 43; the Police Act 1996 s 103(1), Sch 7 Pt I para 1(1), (2)(zd); the Police Act 1997 s 88, Sch 6 para 32; and the Local Government Reorganisation (Wales) (Consequential Amendments No 3) Order 1996, SI 1996/3071, art 2, Schedule para 3(9)). As to areas and authorities in England see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante. As to the Council of the Isles of Scilly see para 40 ante.

3 A single or other payment falling to be made by virtue of the Local Government and Housing Act 1989 s 157(1) is for these purposes referred to as a 'commuted payment' and the calculation of the amount of any commuted payment must be such as appears to the Secretary of State to be appropriate: s 157(4). An authority must furnish the Secretary of State with such information as he may by notice in writing reasonably require for the purposes of these provisions and, if the notice so specifies, any information must be certified and audited in such manner and supplied not later than such date and in such form as may be so specified: s 157(9).

4 Ibid s 157(1)(a). See note 5 infra. Where the amount of any annual or other periodic payment as is mentioned in s 157(1) is, at 16 November 1989, calculated by reference to a variable rate of interest, the Secretary of State may substitute a fixed rate of interest: s 157(5).

5 Ibid s 157(1)(b). It is for the Public Works Loans Commissioners to determine the amount owing to them and, if only part of a commuted payment is paid to them, the balance must be paid to the local authority concerned: s 157(2).

Section 157(1) applies whether the annual or other periodic payments began before, on or after 16 November 1989 and applies notwithstanding anything in any enactment requiring the payments to be made over a period of 20 years or any other specified period: s 157(3).

As to borrowing by a local authority from the commissioners see para 595 post.

6 Ibid s 157(7)(a).

7 Ibid s 157(7)(b).

516. Expenditure, receipts, investment and lending. The expenditure of a local authority[1] comprises the cost of direct functional work[2] and the cost of staff, land, buildings and other establishment activities authorised by the Local Government Act 1972 or by other enactments[3]. Some of these costs are charged to revenue and some to capital[4]. To meet the total of such expenditure the local authority has available receipts in the form of precepts[5], council tax and rates[6], grants[7], rents, charges and fees[8], profits from undertakings[9], contributions from general and collection funds[10], and money borrowed[11]. There may also be contributions received from other local authorities[12]. The income of a local authority is exempt from income tax and corporation tax[13] and capital gains tax[14].

Without prejudice to powers conferred by or under any other enactment, any authority to which this provision applies[15] may invest property held by the authority in accordance with a scheme submitted to the Treasury by any association of local authorities and approved by the Treasury as enabling investments to be made collectively without in substance extending the scope of powers of investment[16].

Among the purposes for which local authorities[17] are empowered to lend money are the erection of buildings on land sold or leased by a local

authority[18] and lending to other local authorities and certain other public authorities[19]. There are further specific powers for certain principal authorities which have serious inner area problems to make loans for a wide range of purposes involved in the urban programme[20].

1 For the meaning of 'local authority' see para 24 ante.
2 Ie under the specific legislation relating to eg education, housing, highways, town planning, police, fire service, public health and social services.
3 In this sense a local authority is empowered or required to arrange for meetings, to appoint staff, to build halls and offices, to purchase, appropriate and dispose of land, to carry out research, to provide information, to safeguard archives, to make and collect rates, to establish a range of funds and to do other things as part of a comprehensive set of functions.
4 As to expenditure see para 518 et seq post. As to capital finance see para 558 et seq post.
5 Ie under the Local Government Finance Act 1992 Pt I Ch IV (ss 39–52) (as amended): see paras 524–527 post.
6 As to council tax and non-domestic rates see RATING AND COUNCIL TAX.
7 As to grants see paras 531–544 post.
8 The largest element of these receipts represents housing rents: see HOUSING. Certain of the charges and fees are discussed elsewhere in this work: see eg CREMATION AND BURIAL; EDUCATION; HIGHWAYS, STREETS AND BRIDGES; LAND CHARGES; PROTECTION OF ENVIRONMENT AND PUBLIC HEALTH.
9 As to transport undertakings see ROAD TRAFFIC; as to markets see MARKETS AND FAIRS; and as to harbours see PORTS AND HARBOURS. Authorities must, however, observe the appropriate provisions as to the application or disposal of surplus revenue from an undertaking: Local Government Act 1972 s 152.
10 As to funds see paras 545–557 post.
11 As to borrowing see paras 594–604 post.
12 Ie under the Local Government Act 1972 s 136 (contributions towards expenditure on concurrent functions: see para 523 post), or under the Local Government Act 1958 s 56 (as amended) (contributions by county councils to expenses of district councils: see para 523 post).
13 See the Income and Corporation Taxes Act 1988 s 519(1); and INCOME TAXATION.
14 See the Taxation of Chargeable Gains Act 1992 s 271(3); and CAPITAL GAINS TAXATION.
15 For these purposes the authorities are:
   (1) in England and Wales, the Greater London Authority, the council of a county, a county borough, a borough a district or a parish, the Common Council of the City of London, a functional body (within the meaning of the Greater London Authority Act 1999), the Broads Authority, a national park authority, a police authority established under the Police Act 1996 s 3 (see POLICE vol 36(1) (Reissue) para 316 et seq), the Service Authority for the National Crime Squad, a joint authority established by the Local Government Act 1985 Pt IV (ss 23–42) (as amended) (see para 53 et seq ante) and the Council of the Isles of Scilly (Trustee Investments Act 1961 s 11(4)(a) (amended by the London Government Act 1963 s 93(1), Sch 18 Pt II; the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 ss 84, 102, Sch 14 para 38, Sch 17; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6; the Education Reform Act 1988 s 237, Sch 13 Pt I; the Water Act 1989 s 190, Sch 25 para 29; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 19(1); the Police and Magistrates' Courts Act 1994 s 43, Sch 1 Pt II para 46; the Environment Act 1995 s 78, Sch 10 para 5; the Police Act 1996 s 103, Sch 7 para 1(2)(a); the Police Act 1997 s 134(1), Sch 9 para 4(a); and the Greater London Authority Act 1999 s 387(1), (2)));
   (2) in Scotland, a local authority within the meaning of the Local Government (Scotland) Act 1947 (Trustee Investments Act 1961 s 11(4)(b));
   (3) in any part of Great Britain, a joint board or joint committee constituted to discharge or advise on the discharge of the functions of any two or more authorities mentioned in heads (1) and (2) supra (including a joint committee established by those authorities acting in combination in accordance with regulations made under the Superannuation Act 1972 s 7 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 875) (Trustee Investments Act 1961 s 11(4)(c) (amended by the Superannuation Act 1972 s 29(1), Sch 6 para 40));
   (4) in Northern Ireland, a district council established under the Local Government Act (Northern Ireland) 1972 and the Northern Ireland Local Government

Officers' Superannuation Committee established under the Local Government (Superannuation) Act (Northern Ireland) 1950 (Trustee Investments Act 1961 s 11(4)(d) (amended by the Transfer of Functions (Local Government, etc) (Northern Ireland) Order 1973, SR & O 1973/256, art 3, Sch 2)); and

(5) in any part of the United Kingdom, the Service Authority for the National Criminal Intelligence Service (Trustee Investments Act 1961 s 11(4)(e) (added by the Police Act 1997 s 134(1), Sch 9 para 4(b)).

16 Trustee Investments Act 1961 s 11(1) (amended by the London Government Act 1963 s 93(1), Sch 8 Pt II; and the Local Government Act 1985 s 102, Sch 17). A scheme under this provision may apply to a specified authority or to a specified class of authorities, may make different provisions as respects different authorities or different classes of authorities or as respects different descriptions of property or property held for different purposes, and may impose restrictions on the extent to which the power controlled by the Trustee Investments Act 1961 s 11(1) (as so amended) is to be exercisable: s 11(2).

In approving a scheme under this provision, the Treasury may direct that the Financial Services Act 1986 is not to apply to dealings undertaken or documents issued for the purposes of the scheme, or to such dealings or documents of such descriptions as may be specified in the direction: Trustee Investments Act 1961 s 11(3) (amended by the Financial Services Act 1986 s 212(2), Sch 16 para 2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.

17 Local authorities' powers to lend money are in nearly all cases contained in specific housing, planning or land development legislation, which it is necessary to examine in order to determine which authorities may lend.

18 This power arises under the Local Authorities (Land) Act 1963 s 3 (as amended), s 4: see para 501 ante. For the authorities which may lend see note 20 infra.

19 This power arises under the Local Government Act 1972 s 172, Sch 13 paras 13, 14 (Sch 13 repealed in relation to the bodies mentioned in para 559 post by the Local Government and Housing Act 1989 s 194(2), Sch 12 Pt I).

20 This power arises under the Inner Urban Areas Act 1978 ss 2, 3, 5–9: see TOWN AND COUNTRY PLANNING. The authorities which may lend are district and county councils in the district or county of which are included the districts designated as having special social need: see ss 1(2), 17(1).

517. **Private finance initiative.** Public private partnerships involve the public and private sectors working together to improve services, and the private finance initiative aims to provide value for money[1] and to allocate risk between the public and private sectors. Private finance transactions are a form of credit arrangement[2], under which a private sector contractor provides capital assets and certain services. Arrangements for private finance transactions, and other concessions, are contained in the Local Authorities (Capital Finance) Regulations 1997[3], and further provision is made in relation to contracts by the Local Government (Contracts) Act 1997[4].

1 As to value for money see also the best value requirements in the Local Government Act 1999; and para 635 et seq post.

2 As to credit arrangements see para 579 et seq post.

3 Ie the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319 (as amended). As to capital finance generally see para 558 et seq post.

4 See paras 320–325 ante.

(2) EXPENDITURE

518. **Powers to incur expenditure.** The power of local authorities[1] to incur expenditure stems from three main classes of legislation:

(1) the enactments which confer powers or impose duties to execute specific statutory functions[2];

(2) the enactments which provide a wide spectrum of administrative, financial or other management powers[3]; and

(3) certain specific enactments which are intended as reserve powers to

enable reasonable expenditure to be incurred on matters not the subject of other statutory authorisation for local government action[4].

As statutory corporations, local authorities are subject to the ultra vires rule which prohibits them from spending money or from executing matters for which they have no statutory power[5]. However, a local authority[6] is empowered to do any thing[7] calculated to facilitate, or conducive or incidental to, the discharge of its functions[8], and this effective tolerance must therefore be borne in mind in the interpretation of all the specific powers or duties in relation to functions.

1 For the meaning of 'local authority' see para 24 ante.

2 As to the specific functions of local authorities see para 446 et seq ante.

3 The Local Government Act 1972 contains the following provisions which make specific reference to expenditure: ss 3(5), 5(4), 15(5), 22(5), 24(4), 34(5) (expense allowances of chairmen and vice-chairmen: see para 51 ante); s 68(1), (4), (5) (agreements with respect to expenses so far as affected by the alteration, abolition or constitution of the area of a local authority: see para 91 ante); s 103 (expenses of joint committees: see para 306 ante); s 112(2) (terms of remuneration for officers: see para 332 ante); s 114(3) (defrayment of cost of security taken in respect of officers and other persons entrusted with custody or control of money or property belonging to the local authority: see para 358 ante); s 118(1) (payment of sums due to mentally disordered persons: see para 361 ante); s 119(1), (2) (payment of sums due to deceased officers: see para 360 ante); ss 120(1), 124(1) (acquisition of land by agreement: see paras 490, 496 ante); s 129(1) (payment of compensation for land acquired from another local authority: see para 510 ante); s 133 (contributions by parish or community councils towards cost of provision by other such council or person of parish or community building: see para 245 ante); s 134(4) (cost of use or damage where schoolroom used for parish or community or certain other meetings: see para 246 ante); s 137 (as amended) (expenditure for certain purposes not otherwise authorised: see para 519 post); s 138 (as amended) (expenditure with respect to emergencies or disasters: see para 521 post); s 139(2) (expenditure on donated property: see para 507 ante); s 140(1) (as amended) (insurance against accidents to members: see para 204 ante); ss 140A, 140B (both as added and amended) (insurance against accidents to and sickness of voluntary assistants: see para 204 ante); s 143(1) (subscriptions to local government associations: see para 468 ante); s 144(2) (contributions to tourist organisations established for the purposes of encouraging persons to visit the United Kingdom: see para 476 ante); s 145(1) (contributions to the expenses of the provision of entertainment: see para 474 ante); s 150(2), (3) (expenses of parish meetings and community meetings: see para 522 post); ss 173–178 (as amended) (allowances to members: see para 193 et seq ante); s 214(6) (contributions by burial authority to maintenance of cemeteries: see para 446 ante); s 239(1) (defrayment of expenses incurred in promoting or opposing Bills: see para 453 ante); s 240(2) (costs of promoting or opposing provisional orders: see para 109 ante); s 249(6) (as amended) (expenditure on presentations to honorary aldermen or honorary freemen: see para 99 ante); and s 250(4) (as amended) (costs of local inquiries: see para 113 ante).

The fact that other provisions are framed without reference to expenses is not, however, material; in the cases of specific reference to expenditure the function is either a financing function per se or is not capable of certain description without some reference to expenditure.

4 As to powers for expenditure on matters not otherwise authorised see the Local Government Act 1972 s 137 (as amended); and para 519 post. As to powers in relation to emergencies or disasters see s 138 (as amended); and para 521 post.

5 As to the ultra vires rule see para 409 ante.

6 For these purposes, 'local authority' includes the Common Council of the City of London: Local Government Act 1972 ss 111(4), 270(1). As to local government in London see para 39 ante; and LONDON GOVERNMENT.

7 Ie whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights: ibid s 111(1).

8 Ibid s 111(1). For the purpose of s 111, transacting the business of a parish or community meeting or any other parish or community business is to be treated as a function of the parish or community council: s 111(2). But a local authority may not, by virtue of s 111,

raise money, whether by means of rates, precepts or borrowing, or lend money, except in accordance with the enactments relating to those matters respectively: s 111(3).

519. Expenditure for the benefit of a local authority's area. A local authority[1] may, subject to the following provisions, incur expenditure which in its opinion is in the interests of, and will bring direct benefit to, its area or any part of it or all or some of its inhabitants[2], but it may not, by virtue of this power, incur any expenditure:

(1) for a purpose for which it is, either unconditionally or subject to any limitation or to the satisfaction of any condition, authorised or required to make any payment by or by virtue of any other enactment[3]; nor

(2) unless the direct benefit accruing to its area or any part of it or to all or some of the inhabitants of its area will be commensurate with the expenditure to be incurred[4].

A local authority may incur expenditure under heads (1) and (2) above on publicity[5] only by way of assistance to a public body or voluntary organisation[6] where the publicity is incidental to the main purpose for which the assistance is given[7].

A local authority[8] may, subject to the following provisions, incur expenditure on contributions to any of the following funds, that is to say:

(a) the funds of any charitable body in furtherance of its work in the United Kingdom[9];

(b) the funds of any body which provides any public service (whether to the public at large or to any section of it) in the United Kingdom otherwise than for the purposes of gain[10]; or

(c) any fund which is raised in connection with a particular event directly affecting persons resident in the United Kingdom on behalf of whom a public appeal for contributions has been made by the Lord Mayor of London or the chairman of a principal council or by a committee of which the Lord Mayor of London or the chairman of a principal council is a member or by such a person or body as is referred to in the Local Government (Scotland) Act 1973[11].

However, the expenditure of a local authority under these powers[12] in any financial year[13] may not exceed the amount produced by multiplying such sum as is for the time being appropriate to the authority[14] by the relevant population[15] of the authority's area[16].

For the purpose of determining whether a local authority has exceeded the limit set out above[17], its expenditure in any financial year under this provision must be taken to be the difference between its gross expenditure under this provision for that year and the aggregate of the amounts specified in heads (i) to (vi) below[18]. The amounts mentioned above are:

(i) the amount of any expenditure which forms part of the authority's gross expenditure for that year under this provision and in respect of which any grant has been or is to be paid under any enactment by a Minister of the Crown[19] (whether or not the grant covers the whole of the expenditure)[20];

(ii) the amount of any repayment in that year of the principal of a loan for the purpose of financing expenditure under this provision in any year[21];

(iii) so much of any amount raised by public subscription as is spent in that year for a purpose for which the authority is authorised by this provision to incur expenditure[22];

(iv) any grant received by the authority for that year out of the European Regional Development Fund or the Social Fund of the European Economic Community, in so far as the grant is in respect of an activity in relation to which the authority incurred expenditure in that year under this provision[23];

(v) the amount of any repayment in that year of a loan under this provision made by the authority in any year[24]; and

(vi) the amount of any expenditure which is incurred by the authority in that year in circumstances specified in an order made by the Secretary of State[25], which is incurred by the authority in that year and is of a description so specified, or which is defrayed by any grant or other payment to the authority which is made in or in respect of that year and is of a description so specified[26].

The accounts of a local authority by whom expenditure is incurred under this provision must include a separate account of that expenditure, and the Audit Commission Act 1998[27] applies in relation to any such separate account of a local authority as it applies in relation to any statement of accounts prepared by it pursuant to regulations under that Act[28].

1 For these purposes, 'local authority' means a parish or community council: Local Government Act 1972 s 137(9) (substituted by the Local Government Act 2000 s 8). For the meaning of 'local authority' generally see para 24 ante. As to parish councils see para 30 et seq ante; and as to community councils see para 46 et seq ante.

2 The wording appears to negative, by contrary intention, the rule in the Interpretation Act 1978 s 6(c) that the plural includes the singular.

3 Local Government Act 1972 s 137(1)(a) (amended by the Local Government and Housing Act 1989 s 36). In any case where by virtue of the Local Government Act 1972 s 137(1)(a) (as amended) a local authority is prohibited from incurring expenditure for a particular purpose, and the power or duty of the authority to incur expenditure for that purpose is in any respect limited or conditional (whether by being restricted to a particular group of persons or in any other way), the prohibition must extend to all expenditure to which that power or duty would apply if it were not subject to any limitation or condition: s 137(1A) (added by the Local Government and Housing Act 1989 s 36).

The Local Government and Housing Act 1989 ss 33–35 (repealed) empower local authorities to participate in the provision of financial assistance for the setting up or expansion of any commercial, industrial or public undertaking which is to be situated in that authority's area or the setting up or expansion of which appears likely to increase the opportunities for employment of persons living in that area.

4 Local Government Act 1972 s 137(1)(b) (as amended: see note 3 supra). The power of a local authority to incur expenditure under s 137(1) (as amended) includes power to do so by contributing towards the defraying of expenditure by another local authority in or in connection with the exercise of that other authority's functions: s 137(2). For the power of a county council to contribute to any expenditure of a district council and to expenditure relating to open spaces of a parish or community council or parish meetings see para 523 post.

In *Manchester City Council v Greater Manchester County Council* (1980) 78 LGR 560, HL, the House of Lords held that a scheme by the county council (although that council was not a local education authority) to pay money in order to advance the education of children living in the county was within the powers of the county council under the Local Government Act 1972 s 137(1) (as amended), and that the county council had power to set up a trust for that purpose as being incidental to its power to expend such money.

5 For these purposes 'publicity' means any communication, in whatever form, addressed to the public at large or to a section of the public: ibid s 137(2D) (added by the Local Government Act 1986 s 3(3)).

6 For these purposes, 'voluntary organisation' means a body which is not a public body but whose activities are carried on otherwise than for profit: Local Government Act 1972 s 137(2D) (as added: see note 5 supra).

7 Ibid s 137(2C) (added by the Local Government Act 1986 s 3(3); and amended by the Local Government and Housing Act 1989 ss 36, 194(2), Sch 12 Pt III).

8 For these purposes 'local authority' means: (1) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London or a parish council; (2) in relation to Wales, a county council, a county borough council or a community council: Local Government Act 1972 s 137(10) (added by the Local Government Act 2000 s 8). As to areas and authorities in England see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante.

9 Local Government Act 1972 s 137(3)(a) (s 137(3) amended by the Local Government and Housing Act 1989 s 36).

10 Local Government Act 1972 s 137(3)(b) (as amended: see note 9 supra).

11 Ie the Local Government (Scotland) Act 1973 s 83(3)(c): Local Government Act 1972 s 137(3)(c) (as amended: see note 9 supra).

12 The relevant proportion of pay and expenses of a local authority's officers attributable to time spent on functions authorised under ibid s 137 (as amended), is to be taken into account when calculating the expenditure of a local authority under those powers: *Leicester City Council v District Auditor for Leicester* (1985) 29 RVR 162, CA.

13 'Financial year' means the period of 12 months ending with 31 March in any year: Local Government Act 1972 s 270(1).

14 Ie under ibid s 137(4AA) (as added): see s 137(4)(a) (s 137(4) amended by the Local Government and Housing Act 1989 s 36). For the purposes of the Local Government Act 1972 s 137(4)(a) (as amended), the sum appropriate to a parish or community council is £3.50: s 137(4AA)(c) (s 137(4AA) added by the Local Government and Housing Act 1989 s 36). The Local Authorities (Discretionary Expenditure Limits) Order 1993, SI 1993/41, has been made under the Local Government Act 1972 s 137(4AA) (as added), (5) (amended by the Local Government (Miscellaneous Provisions) Act 1982 s 44) specifying the appropriate sums for certain other bodies as follows:

(1) for the council of a county or non-metropolitan district the amount is £1.90 (Local Authorities (Discretionary Expenditure Limits) Order 1993, SI 1993/41, art 2);

(2) for the council of a metropolitan district which is a constituent council for the purposes of a scheme under the Local Government Act 1985 s 48 (grants to voluntary organisations) the amount is £3.55 (Local Authorities (Discretionary Expenditure Limits) Order 1993, SI 1993/41, art 2);

(3) for the council of any other metropolitan district the amount is £3.80 (art 2); and

(4) for any local authority whose area is within Greater London the amount is £3.55 (art 2).

In addition, the Local Authorities (Discretionary Expenditure Limits) (England) Order 1995, SI 1995/651, has been made under the Local Government Act 1972 s 137(4AA) (as so added), (5) (as amended), specifying the appropriate sum of £3.80 in relation to a county council which is also exercising the functions of a district council pursuant to an order made under the Local Government Act 1992 s 17 (a structure changing order) and a district council which is also exercising the functions of a county council pursuant to a structure change order: Local Authorities (Discretionary Expenditure Limits) (England) Order 1995, SI 1995/651, art 2.

In relation to Wales, the sum appropriate to a principal or a community council for the purposes of the Local Government Act 1972 s 137(4)(a) (as amended) is £5: Local Authorities (Discretionary Expenditure Limits) (Wales) Order 2000, SI 2000/990, art 2(1).

15 For these purposes the relevant population of a local authority's area must be determined in accordance with the Local Authorities (Discretionary Expenditure) (Relevant Population) Regulations 1993, SI 1993/40, made under the Local Government Act 1972 s 137(4AB) (added by the Local Government and Housing Act 1989 s 36).

16 Local Government Act 1972 s 137(4) (amended by the Local Government and Housing Act 1989 s 36).

17 Ie in the Local Government Act 1972 s 137(4) (as amended): see s 137(4A) (added by the Local Government (Miscellaneous Provisions) Act 1982 s 44).

18 Local Government Act 1972 s 137(4A) (as added: see note 17 supra).

19 Ie within the meaning of the Ministers of the Crown Act 1975: see the Local Government Act 1972 s 137(4B)(a) (s 137(4B) added by the Local Government (Miscellaneous

Provisions) Act 1982 s 44; and the Local Government Act 1972 s 137(4B)(a) substituted by the Local Government and Housing Act 1989 s 36).

20 Local Government Act 1972 s 137(4B)(a) (as added and substituted: see note 19 supra).

21 Ibid s 137(4B)(b) (as added: see note 19 supra).

22 Ibid s 137(4B)(c) (as added: see note 19 supra).

23 Ibid s 137(4B)(d) (as added: see note 19 supra).

24 Ibid s 137(4B)(e) (as added: see note 19 supra).

25 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

26 Local Government Act 1972 s 137(4B)(f) (as added: see note 19 supra).

27 Ie the Audit Commission Act 1998 s 14 (rights of inspection) (see para 673 post): see the Local Government Act 1972 s 137(7) (amended by the Audit Commission Act 1998 s 54(1), Sch 3 para 3(4)).

28 Ie under the Audit Commission Act 1998 s 27 (see para 628 post): Local Government Act 1972 s 137(7) (as amended: see note 27 supra).

520. Financial assistance conditional on provision of information. If in any financial year[1] a local authority[2] provides financial assistance[3] to a voluntary organisation[4] or to a specified body or fund[5], and the total amount[6] provided to that organisation, body or fund in that year exceeds the relevant minimum[7], then, as a condition of the assistance, the authority must require the organisation, body or fund, within the period of 12 months beginning on the date when the assistance is provided[8], to furnish to the authority a statement in writing of the use to which that amount has been put[9]. A statement (or any reports or accounts) provided to the local authority in pursuance of the above requirement must be deposited with the proper officer of the authority[10].

A local authority may promote a local lottery for any purpose for which it has power to incur expenditure under any enactment, including the powers here discussed[11].

1 For the meaning of 'financial year' see para 519 note 13 ante.

2 For these purposes, 'local authority' includes the Common Council of the City of London: Local Government Act 1972 s 137A(6) (s 137A added by the Local Government and Housing Act 1989 s 37). For the meaning of 'local authority' generally see para 24 ante. As to local government in London see para 39 ante; and LONDON GOVERNMENT.

3 For these purposes, 'financial assistance' means assistance by way of grant or loan or by entering into a guarantee to secure any money borrowed: Local Government Act 1972 s 137A(2) (as added: see note 2 supra).

4 Ie as defined in ibid s 137(2D) (as added) (see para 519 note 6 ante): see s 137A(1)(a) (as added: see note 2 supra).

5 Ie specified in ibid s 137(3) (as amended) (see para 519 ante): see s 137A(1)(b) (as added: see note 2 supra).

6 For these purposes any reference to the amount of the assistance is a reference to the amount of money granted or lent by the local authority or borrowed in reliance on the local authority's guarantee: ibid s 137A(2)(a) (as added: see note 2 supra).

7 The relevant minimum referred to in ibid s 137A(1) (as added) is £2,000 or such higher sum as the Secretary of State may by order specify: s 137A(3) (as so added). For the purposes of s 137A(1) (as added) the sum of £5,000 is specified as the relevant minimum for financial assistance provided by a local authority in Wales: Local Authorities (Discretionary Expenditure Limits) (Wales) Order 2000, SI 2000/990, art 2(2). As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

8 For these purposes any reference to the date when the assistance is provided is a reference to the date on which the grant or loan is made or, as the case may be, on which the guarantee is entered into: Local Government Act 1972 s 137A(2)(b) (as added: see note 2 supra).

9 Ibid s 137A(1) (as added: see note 2 supra). It is a sufficient compliance with a requirement imposed by s 137A(1) (as added) that there is furnished to the local authority concerned an annual report or accounts which contain the information required to be in the statement: s 137A(4) (as so added).

10 Ibid s 137A(5) (as added: see note 2 supra). The proper officer is an officer appointed by a local authority for that purpose: s 270(3), (4)(c). As to the proper officer generally see para 336 ante.

11 See the Lotteries and Amusements Act 1976 s 7(1); and BETTING, GAMING AND LOTTERIES vol 4(1) (Reissue) para 159.

521. Expenditure in the case of emergencies or disasters. Where an emergency or disaster involving destruction of or a danger to life or property occurs or is imminent or there is reasonable ground for apprehending such an emergency or disaster, and a principal council[1] is of the opinion that it is likely to affect the whole or part of its area[2] or all or some of its inhabitants, the council may:

(1) incur such expenditure as it considers necessary in taking action itself[3] which is calculated to avert, alleviate or eradicate in its area or among those inhabitants the effects or potential effects of the event[4]; or

(2) make grants or loans to other persons or bodies on conditions determined by the council in respect of any such action taken by those persons or bodies[5].

If a principal council is of the opinion that it is appropriate to undertake contingency planning[6] to deal with a possible emergency or disaster which, if it occurred:

(a) would involve destruction of or danger to life or property; and

(b) would be likely to affect the whole or part of its area,

it may incur such expenditure as it considers necessary on that planning (whether relating to a specific kind of such possible emergency or disaster or generally in relation to possible emergencies or disasters falling within heads (a) and (b) above)[7].

Subject to certain exceptions for land drainage work[8], the above powers are in addition to and not in derogation of any other power[9].

1 For these purposes, 'principal council' includes the Common Council of the City of London: Local Government Act 1972 s 138(4). For the meaning of 'principal council' generally see para 24 ante.

2 For the meaning of 'principal area' see para 24 ante. Accretions from the sea are incorporated in the relevant areas: ibid s 72(1), (2) (amended by the Local Government (Wales) Act 1994 s 66(5), (8), Sch 15 paras 1, 18, Sch 18).

3 Ie either alone or jointly with any other person or body and either in its area or elsewhere in or outside the United Kingdom: see the Local Government Act 1972 s 138(1)(a).

4 Ibid s 138(1)(a). An emergency or disaster occurring outside its area is a proper reason for expenditure by a principal council if it is likely to affect all or some of the inhabitants of its area. As to emergency financial assistance to local authorities see para 541 post.

5 Ibid s 138(1)(b). With the consent of the Secretary of State, a metropolitan county fire and civil defence authority and the London Fire and Emergency Planning Authority may incur expenditure in co-ordinating planning by principal councils in connection with their functions under s 138(1): s 138(5) (added by the Local Government and Housing Act 1989 s 156(1), (3); and amended by the Greater London Authority Act 1999 s 328, Sch 29 Pt I para 16). As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

6 For these purposes, 'contingency planning' means the making, keeping under review and revising of plans and the carrying out of training associated with the plans: Local Government Act 1972 s 138(6) (added by the Local Government and Housing Act 1989 s 156(1), (3)).

7 Local Government Act 1972 s 138(1A) (added by the Local Government and Housing Act 1989 s 156(1), (3)).
8 Nothing in the Local Government Act 1972 s 138 (as amended) authorises a local authority to execute any drainage or other works in any part of a main river within the meaning of the Water Resources Act 1991 Pt IV (ss 105–113) (as amended) (see WATER vol 49(2) (Reissue) para 312 et seq), or of any other watercourse which is treated for the purposes of any of the provisions of that Act as part of a main river, or any works which local authorities have power to execute under the Land Drainage Act 1991 ss 62(2), (3), 66 (see WATER vol 49(2) (Reissue) paras 346, 349): Local Government Act 1972 s 138(3) (amended by the Local Government and Housing Act 1989 s 156(2); and the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 22(2)).
9 Including any enactment contained in the Local Government Act 1972: s 138(3) (as amended: see note 8 supra).

522. Expenses of parish and community councils. In a parish having a separate parish council[1] or in a community having a separate or common council[2], the expenses of the parish meeting[3] or any community meeting[4] must be paid by the community council[5]. In a community not having a community council, whether separate or common, the expenses of any community meeting must be paid by the council of the principal area[6] in which the community is situated[7].

1 As to parish councils see para 30 et seq ante.
2 As to community councils see para 46 et seq ante.
3 For the meaning of 'parish meeting' see para 37 ante.
4 For the meaning of 'community meeting' see para 46 ante. References in the Local Government Act 1972 s 150 (as amended) to the expenses of a community meeting include references to the expenses of any poll consequent on a parish or community meeting: s 150(7) (amended by the Local Government Finance (Repeals and Consequential Amendments) Order 1991, SI 1991/1730, art 2(1), Sch 1).
5 Local Government Act 1972 s 150(2) (amended by the Local Government Finance (Repeals and Consequential Amendments) Order 1991, SI 1991/1730, art 2(1), Sch 1).
6 For the meaning of 'principal council' see para 24 ante.
7 Local Government Act 1972 s 150(3) (amended by the Local Government (Wales) Act 1994 s 66(5), Sch 15 para 34).

523. Inter-authority contributions to expenditure. A county council[1] may make any contribution it thinks fit to the expenditure[2] of a council of a district in the county[3]. A county council may also make any contribution it thinks fit towards expenditure by a parish council or a parish meeting in connection with the exercise of the functions[4] of the council or meeting relating to public open spaces[5]. A local authority[6] has a general power to contribute towards the defraying of expenditure by another local authority if the contributing authority considers that the contribution is in the interests of and will bring direct benefit to its area or any part of it or all or some of its inhabitants, and the purpose of the expenditure is not otherwise authorised[7].

Further, two or more local authorities may make arrangements for defraying any expenditure incurred by one of them in exercising any functions exercisable by both or all of them[8].

1 As to areas and authorities in England see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante.
2 'Expenditure' includes sums paid by virtue of a precept or other instrument or by way of contribution: Local Government Act 1958 s 66(1).
3 Local Government Act 1958 s 56(1) (amended by the Statute Law (Repeals) Act 1974; and the Statute Law (Repeals) Act 1978).
4 For these purposes, 'functions' means powers or duties: Local Government Act 1958 s 66(1). As to functions of local authorities see para 446 et seq ante.

5 Ibid s 56(2) (amended by the Local Government Act 1972 s 272(1), Sch 30).

6 For these purposes, 'local authority' means a parish or community council: Local Government Act 1972 s 137(9) (substituted by the Local Government Act 2000 s 8). For the meaning of 'local authority' generally see para 24 ante.

7 Local Government Act 1972 s 137(1) (as amended), (2); and see para 519 ante.

8 Ibid s 136. Such arrangements may arise informally and are terminable on reasonable notice: *R v Rossendale Borough Council, ex p Whitworth Town Council* (1997) 96 LGR 507.

(3) PRECEPTS

524. Issue of precepts by major precepting authorities. For each financial year[1] a major precepting authority[2] must issue a precept or precepts[3]. A precept must be issued before 1 March in the financial year preceding that for which it is issued, but is not invalid merely because it is issued on or after that date[4]. A precept may only be challenged by way of judicial review[5].

A precept may only be issued to an appropriate billing authority[6]. A precept must state:

(1) the amount which, in relation to the year and each category of dwellings[7] in the billing authority's area, has been calculated (or last calculated)[8] by the precepting authority[9]; and

(2) the amount which has been calculated (or last calculated)[10] by the precepting authority as the amount payable by the billing authority for the year[11].

A major precepting authority must assume for these purposes that each of the valuation bands is shown in the billing authority's valuation list as applicable to one or more dwellings situated in its area or (as the case may be) each part of its area as respects which different calculations have been so made[12].

Before issuing the first precept to be issued by it for the financial year, a major precepting authority is under a duty to consult persons or bodies appearing to the authority to be representative of persons subject to non-domestic rates in the authority's area concerning its proposals for expenditure in that financial year[13].

1 'Financial year', except in references to earlier or preceding financial years, does not include the financial year beginning in 1992 or earlier financial years: Local Government Finance Act 1992 s 69(1).

2 Each of the following is a major precepting authority for the purposes of ibid Pt I (ss 1–69) (as amended), namely:

(1) a county council in England (s 39(1)(a) (amended by the Local Government (Wales) Act 1994 s 35(6));

(2) the Greater London Authority (Local Government Finance Act 1992 s 39(1)(aa) (added by the Greater London Authority Act 1999 s 82(1), (2));

(3) a police authority established under the Police Act 1996 s 3 (see POLICE vol 36(1) (Reissue) para 316) (Local Government Finance Act 1992 s 39(1)(b) (substituted by the Police and Magistrates' Courts Act 1994 s 27(1); and amended by the Police Act 1996 s 103, Sch 7 para 1(2)(zf)); and

(4) a metropolitan county fire and civil defence authority (Local Government Finance Act 1992 s 39(1)(d)).

In respect of the financial year beginning on 1 April 2000, and subsequent financial years, for the purposes of Pt I Ch IV (ss 39–52) (as amended), the Receiver for the Metropolitan Police District's area is to be the area of the inner London boroughs; and the Receiver may only issue precepts to the councils of the inner London boroughs: s 39(5) (added by the Greater London Authority Act 1999 (Transitional and Consequential Finance Provisions) Order 1999, SI 1999/3435, art 5). As to areas and authorities in England see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante.

3 Local Government Finance Act 1992 s 40(1). It is the authority itself and not a committee which must discharge the function of issuing a precept: s 67(1), (2)(d) (s 67(1) amended by the Greater London Authority Act 1999 s 108(1), (2)).

4 Local Government Finance Act 1992 s 40(5).

5 Ibid s 66(1), (2)(e). As to judicial review generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 58 et seq.

6 Ibid s 39(3). For the purposes of Pt I (as amended), 'billing authority' means, in relation to England, a district council or London borough council, the Common Council of the City of London or the Council of the Isles of Scilly and, in relation to Wales, a county council or county borough council: ss 1(2), 69(1) (s 1(2) substituted by the Local Government (Wales) Act 1994 s 35(5)). If the whole or part of a billing authority's area falls within a precepting authority's area, it is an appropriate billing authority in relation to the precepting authority to the extent of the area which so falls: Local Government Finance Act 1992 s 39(4).

If the Secretary of State so requires by regulations, a billing authority must supply prescribed information within a prescribed period to any precepting authority which has power to issue a precept to the billing authority: s 52. As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

7 Dwellings fall within different categories for the purposes of ibid s 40(2) according as different calculations have been made in relation to them in accordance with ss 43–47 (as amended) (see para 525 post): s 40(3). For the purposes of Pt I (as amended), 'dwelling' has the meaning given by s 3 (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 824): s 69(1).

8 Ie in accordance with ibid ss 43–47 (as amended): see para 525 post.

9 Ibid s 40(2)(a). As the amount to be stated under s 40(2)(a) for any financial year in respect of any category of dwellings listed in a particular valuation band see s 47 (amended by the Greater London Authority Act 1999 s 92).

10 Ie in accordance with the Local Government Finance Act 1992 s 48, which makes provision for calculating the amount required by s 40(2)(b) to be stated in a precept as the amount payable by a billing authority for any financial year: see s 48 (amended by the Greater London Authority Act 1999 s 93). See also the Local Authorities (Calculation of Council Tax Base) (Amendment) (England) Regulations 1999, SI 1999/3123; and the Local Authorities (Calculation of Council Tax Base) (Wales) (Amendment) Regulations 1999, SI 1999/2935.

11 Local Government Finance Act 1992 s 40(2)(b).

12 Ibid s 40(4). As to the modifications to s 40 where the precepting authority is the Greater London Authority see s 40(9), (10) (added by the Greater London Authority Act 1999 s 83).

13 Local Government Finance Act 1992 s 65(1), (4)(b). As to non-domestic rates see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 603 et seq.

525. Calculations by major precepting authorities. A major precepting authority[1] is required to make certain calculations in order to determine its annual budget requirements[2]. The authority must calculate:

(1) the aggregate of: (a) the expenditure the authority estimates it will incur in the year in performing its functions and will charge to a revenue account for the year[3]; (b) such allowance as the authority estimates will be appropriate for contingencies in relation to expenditure to be charged to a revenue account for the year[4]; (c) the financial reserves which the authority estimates it will be appropriate to raise in the year for meeting its estimated future expenditure[5]; and (d) such financial reserves as are sufficient to meet so much of the amount estimated by the authority to be a revenue account deficit for any earlier financial year[6] as has not already been provided for[7]; and

(2) the aggregate of the sums which it estimates will be payable to it for the year and in respect of which amounts will be credited to a revenue account for the year[8] and the amount of the financial

reserves which the authority estimates that it will use in order to provide for the items mentioned in heads (1)(a), (b) above[9].

If the aggregate calculated under head (1) above exceeds that calculated under head (2) above, the authority must calculate the amount equal to the difference; and the amount so calculated is its budget requirement for the year[10].

The Secretary of State[11] may by regulations do one or both of the following: (i) alter the constituents of any calculation to be made under head (1) or head (2) above; (ii) alter the rules governing the making of any calculation under head (1) or head (2) above[12].

A major precepting authority must also calculate the basic amount of its council tax in relation to each financial year[13].

A major precepting authority which has made calculations in relation to a financial year in accordance with these provisions[14] (originally or by way of substitute), may make calculations in substitution in relation to the year in accordance with these provisions[15].

1 For the meaning of 'major precepting authority' see para 524 note 2 ante.

2 See the Local Government Finance Act 1992 s 43(1).

3 Local Government Finance Act 1992 s 43(2)(a). The reference in the text to expenditure is to expenditure other than that which the authority estimates will be so incurred in pursuance of regulations under the Local Government Finance Act 1988 s 99(3) (as amended) (see para 549 post) and expenditure which it estimates will be so incurred in making payments to billing authorities in accordance with the Local Government Act 1999 s 31(3): see the Local Government Finance Act 1992 s 43(2)(a). For the meaning of 'billing authority' see para 524 note 6 ante.

4 Ibid s 43(2)(b).

5 Ibid s 43(2)(c).

6 For the meaning of 'financial year' see para 524 note 1 ante.

7 Local Government Finance Act 1992 s 43(2)(d).

8 Ibid s 43(3)(a) (amended by the Local Authorities (Alteration of Requisite Calculations and Funds) Regulations 1995, SI 1995/234, reg 4(1)). The reference in the text to sums is to sums other than those which it estimates will be so payable: (1) in respect of redistributed non-domestic rates, revenue support grant, additional grant, relevant special grant or police grant; (2) in respect of any precept issued by it; or (3) in pursuance of regulations under the Local Government Finance Act 1988 s 99(3) (as amended) (see para 549 post): see the Local Government Finance Act 1992 s 43(3)(a) (as so amended). As to non-domestic rates see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 603 et seq. As to grants see para 531 et seq post.

9 Ibid s 43(3)(b).

10 Ibid s 43(4). As to the limitation of precepts where the amount calculated is excessive see para 528 post.

11 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

12 Local Government Finance Act 1992 s 43(7). The following regulations have been made under s 43(7): the Local Authorities (Alteration of Requisite Calculations) (England) Regulations 1999, SI 1999/228; the Local Authorities (Alteration of Requisite Calculations) (Wales) Regulations 1999, SI 1999/296; the Local Authorities (Alteration of Requisite Calculations) (England) Regulations 2000, SI 2000/213; the Local Authorities (Alteration of Requisite Calculations) (Wales) Regulations 2000, SI 2000/717; and the Local Authorities (Alteration of Requisite Calculations) (England) Regulations 2001, SI 2001/216.

13 See the Local Government Finance Act 1992 s 44–46 (ss 44, 46 as amended). See also the Local Authorities (Calculation of Council Tax Base) (Amendment) (England) Regulations 1999, SI 1999/3123; and the Local Authorities (Calculation of Council Tax Base) (Wales) (Amendment) Regulations 1999, SI 1999/2935. As to the council tax see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 817 et seq.

14 Ie in accordance with the Local Government Finance Act 1992 ss 43–48 (as amended): see the text and notes 1–13 supra; and para 524 ante.

15 See ibid s 49 (amended by the Greater London Authority Act 1999 s 94).

526. Issue of precepts by local precepting authorities. For each financial year[1] a local precepting authority[2] must issue a precept[3]. Such a precept must be issued before 1 March in the financial year preceding that for which it is issued, but is not invalid merely because it is issued on or after that date[4]. A precept may only be challenged by way of judicial review[5].

A precept issued to a billing authority[6] must state, as the amount payable by that authority for the year, the amount which has been calculated (or last calculated) by the precepting authority[7] as its budget requirement for the year[8].

A billing authority must supply prescribed information within a prescribed period to any precepting authority which has power to issue a precept to the billing authority[9].

1 For the meaning of 'financial year' see para 524 note 1 ante.

2 Each of the following is a local precepting authority for the purposes of the Local Government Finance Act 1992 Pt I (ss 1–69) (as amended), namely the Sub-Treasurer of the Inner Temple, the Under-Treasurer of the Middle Temple, a parish or community council, the chairman of a parish meeting, and charter trustees: s 39(2). As to areas and authorities see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante.

3 Ibid s 41(1).

4 Ibid s 41(4).

5 Ibid s 66(1), (2)(e). As to judicial review see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 58 et seq.

6 For the meaning of 'billing authority' see para 524 note 6 ante.

7 Ie under the Local Government Finance Act 1992 s 50: see para 527 post.

8 Ibid s 41(2).

9 Ibid s 52.

527. Calculations by local precepting authorities. A local precepting authority[1] is required to make certain calculations in order to determine its annual budget requirements[2]. The authority must calculate:

(1) the aggregate of the expenditure the authority estimates it will incur[3] in the year in performing its functions and will charge to a revenue account for the year[4], such allowance as the authority estimates will be appropriate for contingencies in relation to expenditure to be charged to a revenue account for the year[5], the financial reserves which the authority estimates it will be appropriate to raise in the year for meeting its estimated future expenditure[6], and such financial reserves as are sufficient to meet so much of the amount estimated by the authority to be a revenue account deficit for any earlier financial year[7] as has not already been provided for[8]; and

(2) the aggregate of the sums which it estimates will be payable to it for the year and in respect of which amounts will be credited to a revenue account for the year, other than sums which it estimates will be so payable in respect of any precept issued by it[9], and the amount of the financial reserves which the authority estimates that it will use[10].

If the aggregate calculated under head (1) above exceeds that calculated under head (2) above, the authority must calculate the amount equal to the difference; and the amount so calculated is to be its budget requirement for the year[11].

A local precepting authority which has made calculations[12] in relation to a financial year (originally or by way of substitution) may make calculations in substitution in relation to the year[13].

1 For the meaning of 'local precepting authority' see para 526 note 2 ante.
2 Local Government Finance Act 1992 s 50(1), (4).
3 References in ibid s 50 to expenditure incurred by an authority must be construed in accordance with the Local Government and Housing Act 1989 s 41(3) (see para 560 post): Local Government Finance Act 1992 s 50(6).
4 Ibid s 50(2)(a).
5 Ibid s 50(2)(b).
6 Ibid s 50(2)(c). As to estimated future expenditure see s 50(5).
7 For the meaning of 'financial year' see para 524 note 1 ante.
8 Local Government Finance Act 1992 s 50(2)(d).
9 Ibid s 50(3)(a).
10 Ie in order to provide for the items mentioned in ibid s 50(2)(a), (b): s 50(3)(b).
11 Ibid s 50(4).
12 Ie in accordance with ibid s 50: s 51(1).
13 Ie in accordance with ibid s 50: s 51(1). None of the substitute calculations is to have any effect if the amount calculated under s 50(4) would exceed that so calculated in the previous calculations: s 51(2). However, s 51(2) does not apply if the previous calculation under s 50(4) has been quashed because of a failure to comply with that provision in making the calculation: s 51(3).

528. Limitation of precepts. An authority[1] must notify the Secretary of State[2] in writing of any amount calculated by it as its budget requirement[3] for a financial year, whether originally or by way of substitute[4]. If in the Secretary of State's opinion the amount calculated by an authority as its budget requirement for a financial year (the year under consideration) is excessive, he may exercise his power to designate or nominate the authority[5]. The Secretary of State may make a report specifying in relation to any year under consideration, and any authority, an amount which in his opinion should be used as the basis of any comparison in place of the amount calculated by the authority as its budget requirement for a financial year falling before the year under consideration[6] (the alternative notional amount)[7].

If the Secretary of State designates an authority[8] as regards the year under consideration he must notify the authority in writing of:

(1) the designation[9];
(2) the set of principles determined for the authority[10];
(3) the category in which the authority falls[11];
(4) the amount which he proposes should be the maximum for the amount calculated by the authority as its budget requirement for the year[12];
(5) the target amount for the year, that is, the maximum amount which he proposes the authority could calculate as its budget requirement for the year without the amount calculated being excessive[13]; and
(6) the financial year as regards which he expects the amount calculated by the authority as its budget requirement for that year to be equal to or less than the target amount for that year (assuming one to be determined for that year)[14].

Before the end of the period of 21 days beginning with the day it receives such a notification, an authority may inform the Secretary of State by notice in writing that:

(a) for reasons stated in the notice, it believes the maximum amount stated under head (4) above should be such as the authority states in its notice[15]; or

(b) it accepts the maximum amount stated under head (4) above[16].

The Local Government Finance Act 1992 sets out the procedures to be followed depending on whether head (a) above applies and the designated authority challenges the amount[17], or head (b) above applies and the authority accepts the maximum amount[18]. Where there is neither a challenge nor an acceptance following the 21 day period, the Secretary of State must make an order stating the amount which the amount calculated by the authority as its budget requirement for the year is not to exceed; and the amount stated must be that stated in the notice under head (4) above[19].

If the Secretary of State nominates an authority[20], he must notify the authority in writing of:

(i) the nomination[21];

(ii) the set of principles determined for the authority[22];

(iii) the category in which the authority falls[23]; and

(iv) the amount which he would have proposed as the target amount for the year under consideration if he had designated the authority as regards that year[24].

After nominating an authority the Secretary of State must decide whether to proceed by designating the authority[25] or by not designating the authority[26]. If the former, the Secretary of State must designate the authority as regards the financial year immediately following the year under consideration, determine an amount which he proposes should be the maximum for the amount calculated by the authority as its budget requirement for the year as regards which the designation is made, and determine the target amount for the year as regards which the designation is made, that is, the maximum amount which he proposes the authority could calculate as its budget requirement for the year without the amount calculated being excessive[27]. The authority may thereafter challenge or accept the maximum amount[28]. Failing either challenge or acceptance, the Secretary of State must make an order stating the amount which the amount calculated by the authority as its budget for the year is not to exceed; and the amount stated must be that stated in the notice to the authority[29]. If the latter, the Secretary of State must determine an amount which he proposes should be the notional amount calculated by the authority as its budget requirement for the year under consideration[30].

With regard to major precepting authorities, the Secretary of State has further regulatory powers where an amount calculated by an authority as its budget requirement for a financial year is excessive[31]. Whether an amount is excessive must be determined by reference to criteria specified and published by the Secretary of State[32]. The Secretary of State may by regulations make provision:

(A) as to how sums are to be calculated[33];

(B) as to the manner in which sums are to be paid[34];

(C) as to the period within which, or time or times at which, sums or instalments of sums are to be paid[35];

(D) as to the recovery (by deduction or otherwise) of any excess

amount paid by a precepting authority in purported discharge of any liability arising by virtue of this provision[36];

(E) that if a sum or instalment is not paid to a billing authority in accordance with this provision and the regulations, the authority is to be entitled to interest from the precepting authority on the amount of the sum or instalment[37];

(F) requiring a major precepting authority to supply information to a billing authority to which the precepting authority has power to issue a precept[38];

(G) as to the form and manner in which the information is to be supplied[39]; and

(H) as to the time when the information is to be supplied[40].

The regulations may make different provision in relation to different authorities or categories of authority; and in particular they may require a precepting authority to pay different sums to different billing authorities[41].

1 In the Local Government Finance Act 1992 Pt I Ch IVA (ss 52A–52Z) (as added), reference to an authority is to a billing authority or a major precepting authority: s 52A(1) (added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1; Sch 1 applies in relation to the limitation of council tax and precepts as regards the financial year beginning with 1 April 2000 and subsequent financial years: s 30(2)). For the meaning of 'billing authority' see para 524 note 6 ante. For the meaning of 'major precepting authority' see para 524 note 2 ante. For the meaning of 'financial year' see para 524 note 1 ante.

2 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

3 Any reference in the Local Government Finance Act 1992 Pt I Ch IVA (as added) to the amount calculated (or already calculated) by a major precepting authority other than the Greater London Authority as its budget for a financial year is a reference to the amount calculated by it in relation to the year under s 43(4) (see para 525 ante): s 52W(1) (added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1). Any reference in the Local Government Finance Act 1992 Pt I Ch IVA (as added) to the amount calculated (or already calculated) by the Greater London Authority as its budget requirement for a financial year is a reference to the amount calculated by it in relation to the year under the Greater London Authority Act 1999 s 85(8): Local Government Finance Act 1992 s 52W(2) (added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1; and amended by the Greater London Authority Act 1999 s 136, Sch 9 paras 1, 6).

4 Local Government Finance Act 1992 s 52Y(1) (s 52Y added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1). A notification must be given before the end of the period of seven days beginning with the day on which the calculation was made: Local Government Finance Act 1992 s 52Y(3) (as so added).

5 Ie under ibid s 52D (added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1): Local Government Finance Act 1992 s 52B(1) (s 52B added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1). The question whether the amount so calculated is excessive must be decided in accordance with a set of principles determined by the Secretary of State: Local Government Finance Act 1992 s 52B(2) (as so added). As to the set of principles see s 52B(3) (as so added).

6 Ibid s 52C(1) (s 52C added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1).

7 Local Government Finance Act 1992 s 52C(2) (as added: see note 6 supra).

8 Ie under ibid s 52D(2)(a) (as added): see s 52E(1) (s 52E added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1).

9 Local Government Finance Act 1992 s 52E(2)(a) (as added: see note 8 supra).

10 Ie under ibid s 52B (as added): s 52E(2)(b) (as added: see note 8 supra).

11 If he determines categories under ibid s 52B (as added): s 52E(2)(c) (as added: see note 8 supra).

12 Ibid s 52E(2)(d) (as added: see note 8 supra).

13 Ibid s 52E(2)(e) (as added: see note 8 supra).

14 Ibid s 52E(2)(f) (as added: see note 8 supra).

15 Ibid s 52E(5)(a) (as added: see note 8 supra).

16 Ibid s 52E(5)(b) (as added: see note 8 supra).

17 See ibid s 52F (added by the Local Government Act 1999 Sch 1 Pt I para 1).
18 See the Local Government Finance Act 1992 s 52G (added by the Local Government Act 1999 Sch 1 Pt I para 1).
19 Local Government Finance Act 1992 s 52H(1), (2) (s 52H added by the Local Government Act 1999 Sch 1 Pt I para 1).
20 Ie under the Local Government Finance Act 1992 s 52D(2)(b) (as added): see s 52L(1) (s 52L added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1).
21 Local Government Finance Act 1992 s 52L(2)(a) (as added: see note 20 supra).
22 Ie under ibid s 52B (as added): see s 52L(2)(b) (as added: see note 20 supra).
23 If he determines categories under ibid s 52B (as added): see s 52L(2)(c) (as added: see note 20 supra).
24 Ie under ibid s 52D(2)(a) (as added): see s 52L(2)(d) (as added: see note 20 supra).
25 Ie under ibid s 52M (as added): see s 52L(4)(a) (as added: see note 20 supra).
26 Ie under ibid s 52N (as added): see s 52L(4)(a) (as added: see note 20 supra).
27 Ibid s 52M(2) (s 52M added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1). The authority must be notified in writing of these decisions: Local Government Finance Act 1992 s 52M(4) (as so added).
28 Ibid s 52M(8) (as added: see note 27 supra). The challenge procedure is set out in s 52Q (added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1). The acceptance procedure is set out in the Local Government Finance Act 1992 s 52R (added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1).
29 Ie under the Local Government Finance Act 1992 s 52M(4)(b) (as added: see note 27 supra): see s 52S(1), (2) (s 52S added by the Local Government Act 1999 s 30, Sch 1 Pt I para 1).
30 Local Government Finance Act 1992 s 52N(2) (s 52N added by the Local Government Act 1999 Sch 1 Pt I para 1). The challenge procedure is set out in the Local Government Finance Act 1992 s 52N(5) (as so added).
31 Local Government Act 1999 s 31(1).
32 Ibid s 31(2). These criteria may differ from the factors relevant for the purposes of the Local Government Finance Act 1992 Pt I Ch IVA (as added), and any category determined for this purpose may be different from any category or class relevant for the purposes of Ch IVA (as added): Local Government Act 1999 s 31(4).
33 Ibid s 31(5)(a). See note 41 infra.
34 Ibid s 31(5)(b). See note 41 infra.
35 Ibid s 31(5)(c). See note 41 infra.
36 Ibid s 31(5)(d). See note 41 infra.
37 Ibid s 31(5)(e). See note 41 infra.
38 Ibid s 31(5)(f). See note 41 infra.
39 Ibid s 31(5)(g). See note 41 infra.
40 Ibid s 31(5)(h). See note 41 infra.
41 Ibid s 31(6). The following regulations have been made under s 31(5), (6): the Major Precepting Authorities (Excessive Budget Requirements — Payments) (England) Regulations 1999, SI 1999/2842; the Major Precepting Authorities (Excessive Budget Requirements — Payments) (England) Regulations 2000, SI 2000/214; and the Major Precepting Authorities (Excessive Budget Requirements — Payments) (England) Regulations 2001, SI 2001/219.

529. Substituted precepts. Where a precepting authority[1] has issued a precept or precepts for a financial year[2] (originally or by way of substitute)[3] and at any time it makes substitute calculations[4], it must as soon as reasonably practicable after that time issue a precept or precepts in substitution so as to give effect to those calculations[5]. Where a precepting authority issues a precept in substitution (a new precept) anything paid to it by reference to the precept for which it is substituted (the old precept) must be treated as paid by reference to the new precept[6]. If the amount stated in the old precept exceeds that of the new precept, the following applies as regards anything paid if it would not have been paid had the amount of the old precept been the same as that of the new precept:

(1) it must be repaid if the billing authority[7] by whom it was paid so requires[8];

(2) in any other case it must (as the precepting authority determines) either be repaid or be credited against any subsequent liability of the billing authority in respect of any precept of the precepting authority[9].

If an authority[10] has been designated[11] as regards excessive budget requirement calculations, and after the designation is made the authority makes substitute calculations in relation to the year, the substitute calculations will be invalid unless they are made in accordance with specified statutory provisions[12]. If an authority has been designated[13] as regards a financial year following nomination in respect of excessive budget requirement calculations, and after the designation is made the authority makes calculations or substitute calculations in relation to the year, the calculations (or substitute calculations) will be invalid unless they are made in accordance with specified statutory provisions[14].

1 'Precepting authority' means a major precepting authority or a local precepting authority: Local Government Finance Act 1992 s 69(1). For the meaning of 'major precepting authority' see para 524 note 2 ante. For the meaning of 'local precepting authority' see para 526 note 2 ante.
2 For the meaning of 'financial year' see para 524 note 1 ante.
3 Local Government Finance Act 1992 s 42(1)(a).
4 Ie under ibid s 49 (as amended) (see para 525 ante), s 52J (as added) or s 52U (as added) (see notes 12, 14 infra) or (as the case may be) s 51 (see para 527 ante) or the Greater London Authority Act 1999 s 95: see the Local Government Finance Act 1992 s 42(1)(b) (amended by the Local Government Act 1999 s 30, Sch 1 Pt II paras 2, 4).
5 Local Government Finance Act 1992 s 42(1).
6 Ibid s 42(3).
7 For the meaning of 'billing authority' see para 524 note 6 ante.
8 Local Government Finance Act 1992 s 42(4)(a).
9 Ibid s 42(4)(b).
10 For the meaning of 'authority' see para 528 note 1 ante.
11 Ie under the Local Government Finance Act 1992 s 52D(2)(a) (as added) (see para 528 ante): see s 52E(4)(a) (s 52E added by the Local Government Act 1999 Sch 1 Pt I para 1).
12 Ie in accordance with the Local Government Finance Act 1992 s 52I (added by the Local Government Act 1999 Sch 1 Pt I para 1) as regards a designated billing authority or in accordance with the Local Government Finance Act 1992 s 52J (added by the Local Government Act 1999 Sch 1 Pt I para 1) as regards a designated precepting authority: Local Government Finance Act 1992 s 52E(4) (as added: see note 11 supra). As to the consequences of failure to comply with the substitute calculation provisions in s 52I (as added) or s 52J (as added) see s 52K (added by the Local Government Act 1999 Sch 1 Pt I para 1).
13 Ie under the Local Government Finance Act 1992 s 52M (as added) (see para 528 ante): see s 52M(7)(a) (as added: see para 528 ante).
14 Ie in accordance with ibid s 52T (added by the Local Government Act 1999 Sch 1 Pt I para 1) as regards a designated billing authority or in accordance with the Local Government Finance Act 1992 s 52U (added by the Local Government Act 1999 Sch 1 Pt I para 1) as regards a designated precepting authority: Local Government Finance Act 1992 s 52M(7) (as added: see para 528 ante). As to the consequences of failure to comply with the substitute calculation provisions in s 52T (as added) or s 52U (as added) see s 52V (added by the Local Government Act 1999 Sch 1 Pt I para 1).

530. Levies. In respect of any chargeable financial year[1] no levying body[2] has power under the Act concerned to issue a precept to, make a levy on or have its expenses paid by the council concerned[3]. Whereas a levying body[4] has[5] no such power under the Act concerned in respect of a chargeable financial year, the Secretary of State[6] may make regulations conferring on each levying body power to issue to the council concerned[7] and in accordance with the regulations a levy in respect of any chargeable financial year[8].

In relation to any body which has no power to levy a rate by virtue of regulations[9] or whose power to levy a rate is modified by regulations[10], the appropriate minister[11] may make regulations conferring on any such body power to issue in respect of prescribed chargeable financial years and in accordance with the regulations:

(1) a special levy to such billing authority as is prescribed as regards the body concerned[12]; or

(2) special levies to such billing authorities as are prescribed as regards the body concerned[13].

A levy or special levy so issued may only be challenged by way of judicial review[14].

1 Chargeable financial years are financial years beginning in 1990 and subsequent years: Local Government Finance Act 1988 s 145(1). A financial year is a period of 12 months beginning with 1 April: s 145(3).

2 For the purposes of ibid s 117(6), 'levying body' means any body which:

(1) is established by or under an Act (s 117(5)(a));

(2) apart from s 117(6) would have in respect of the financial year beginning in 1990 power (conferred by or under an Act passed before, or in the same session as, the Local Government Finance Act 1988, ie the 1987–1988 session) to issue a precept to, make a levy on or have its expenses paid by a county council or charging authority (s 117(5)(b)); and

(3) is not a precepting authority, combined police authority, combined fire authority, or magistrates' courts committee (s 117(5)(c) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 84, 86)).

'Precepting authority' has the same meaning as in the Local Government Finance Act 1992 Pt I (ss 1–69) (as amended) (see para 529 note 1 ante): Local Government Finance Act 1988 s 144(2) (substituted by the Local Government Finance Act 1992 ss 117(1), 118(1), Sch 13 para 81(1)). A combined fire authority is a fire authority constituted at any time by a combination scheme under the Fire Services Act 1947 (see FIRE SERVICES): Local Government Finance Act 1988 s 144(5).

3 Ibid s 117(6).

4 For the purposes of ibid s 74 (as amended), 'levying body' means any body which:

(1) is established by or under an Act (s 74(1)(a));

(2) apart from s 117 (as amended) would have in respect of the financial year beginning in 1990 power (conferred by or under an Act passed before, or in the same session as, the Local Government Finance Act 1988) to issue a precept to, make a levy on or have its expenses paid by a county council or charging authority (s 74(1)(b)); and

(3) is not a precepting authority, combined police authority, combined fire authority, or magistrates' courts committee (s 74(1)(c) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 Pt II paras 84, 85)).

Additionally for these purposes, a Welsh joint planning board constituted under the Town and Country Planning Act 1990 s 2(1B) (as added) (see TOWN AND COUNTRY PLANNING) is to be treated as a levying body with respect to which regulations may be made under the Local Government Finance Act 1988 s 74(2): s 74(7) (added by the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 21).

5 Ie by virtue of the Local Government Finance Act 1988 s 117: see s 74(2).

6 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

7 The reference in the Local Government Finance Act 1988 s 74(2) to the council concerned includes a reference to a council to which the functions of the council concerned in relation to the whole or any part of its area have been transferred by or in consequence of an order under the Local Government Act 1992 s 17 (see para 66 ante): Local Government Finance Act 1988 s 74(2A) (added by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 5).

8 Local Government Finance Act 1988 s 74(2). The regulations may include provision as to when levies are to be issued, imposing a maximum limit on levies, as to apportionment where a body issues levies to more than one council, conferring a power to issue levies by way of substitute for others, as to the payment (in instalments or otherwise) of amounts in

respect of which levies are issued, and conferring a right to interest on anything unpaid: s 74(3). As to additional provisions which may be contained in the regulations see s 74(4) (amended by the Local Government Finance Act 1992 s 117(1), Sch 13 para 72(1)), and the Local Government Finance Act 1988 s 74(5) (substituted by the Local Government Finance Act 1992 Sch 13 para 72(2)).

9 Ie under the Local Government Finance Act 1988 s 118: see s 75(1)(a). Section 118 applies as regards any body:

(1) which is established by or under an Act (s 118(1)(a));

(2) which as regards the financial year beginning in 1989 has power (conferred by or under an Act) to levy a rate by reference to the value or yearly value of property (s 118(1)(b)); and

(3) which is not a billing authority (s 118(1)(c) (amended by the Local Government Finance Act 1992 s 117(1), Sch 13 para 74)),

and, in the case of an internal drainage board, there must be disregarded for the purposes of head (2) supra any agreement under the Land Drainage Act 1976 s 81 under which the board has agreed that no drainage rate will be levied on occupiers or owners of certain rateable hereditaments (Local Government Finance Act 1988 s 118(1) (added by the Local Government and Housing Act 1989 s 139, Sch 5 paras 67(1), (3), 79(3)). 'Billing authority' has the same meaning as in the Local Government Finance Act 1992 Pt I (see para 524 note 6 ante): Local Government Finance Act 1988 s 144(2) (as substituted: see note 2 supra).

Regulations under the Local Government Finance Act 1988 s 118(2) (amended by the Local Government and Housing Act 1989 Sch 5, paras 67(2), 79(3)) may provide as regards any such body:

(a) that the body is to have no power to levy the rate as regards any time specified in the regulations and falling after 31 March 1990 (Local Government Finance Act 1988 s 118(2)(a)); or

(b) that the body's power to levy the rate as regards any time specified in the regulations and falling after 31 March 1990 is to be modified in a manner specified in the regulations (s 118(2)(b)).

At the date at which this volume states the law no such regulations had been made under s 118 (as amended). Before making regulations under s 118 (as amended) or s 75 (see the text and notes 10–13 infra), other than regulations relating to an internal drainage board, the Secretary of State must by means of a notice in a newspaper take such steps as he thinks reasonably practicable to bring the contents of the proposed regulations to the notice of persons likely to be affected: s 143(10) (amended by the Local Government and Housing Act 1989 Sch 5 paras 1, 72, 79(3)).

10 Ie under the Local Government Finance Act 1988 s 118: see s 75(1)(b).

11 As to the appropriate minister see ibid s 118(5) (definition added by the Local Government and Housing Act 1989 Sch 5 paras 67(1), (3), 79(3)); definition applied by the Local Government Finance Act 1988 s 75(8) (added by the Local Government and Housing Act 1989 Sch 5 paras 55(4), 79(3)).

12 Local Government Finance Act 1988 s 75(2)(a) (amended by the Local Government and Housing Act 1989 Sch 5 paras 55(2), 79(3); and the Local Government Finance Act 1992 s 117(1), Sch 13 para 73(1)).

13 Local Government Finance Act 1988 s 75(2)(b) (amended by the Local Government and Housing Act 1989 Sch 5 paras 55(2), 79(3); and the Local Government Finance Act 1992 Sch 13 para 73(1)).

The regulations may include provision as to the body's expenditure, or the proportion of its expenditure, which may be met from the proceeds of a special levy or special levies: Local Government Finance Act 1988 s 75(3). They may also include provision as to when special levies are to be issued, imposing a maximum limit on special levies, as to apportionment where a body issues special levies to more than one billing authority, conferring a power to issue special levies by way of substitute for others, as to the payment (in instalments or otherwise) of amounts in respect of which special levies are issued, and conferring a right to interest on anything unpaid: s 75(4) (amended by the Local Government Finance Act 1992 Sch 13 para 73(2), (3)). As to additional provisions which may be contained in the regulations see the Local Government Finance Act 1988 s 75(5) (amended by the Local Government Finance Act 1992 Sch 13 para 73(2), (3)); the Local Government Finance Act 1988 s 75(6) (amended by the Local Government Finance Act 1992 Sch 13 para 73(2), (3)); and the Local Government Finance Act 1988 s 75(7) (substituted by the Local Government Finance Act 1992 Sch 13 para 73(4)).

14 Local Government Finance Act 1988 s 138(1), (2)(e), (f). As to judicial review see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 58 et seq.

(4) GRANTS FROM CENTRAL GOVERNMENT

(i) Revenue Support Grants

531. Abolition and replacement of rate support grants. The system of rate support grants introduced by the Local Government, Planning and Land Act 1980[1] was replaced by a new system of revenue support grants introduced by the Local Government Finance Act 1988[2]. Under the Local Government Finance Act 1988, no payments by way of rate support grants may be made for a financial year beginning in or after 1990[3]. The Secretary of State[4] may by order repeal any enactment relating to rate support grants[5].

If a sum paid to an authority under any provision so repealed is less than the amount which should have been paid to it under that provision, the Secretary of State must calculate the amount equal to the difference and pay a sum equal to that amount to the authority[6]. If a sum in excess of an amount payable to an authority has been paid under any provision so repealed, the Secretary of State must calculate the amount equal to the excess and a sum equal to the amount is due from the authority to the Secretary of State[7]. If the Secretary of State decides that a sum so due is to be recoverable by deduction, he may deduct a sum equalling (or sums together equalling) that sum from anything the authority is entitled to receive from him (whether by way of revenue support grant or otherwise)[8]. If the Secretary of State decides that a sum so due is to be recoverable by payment, it is payable on such day as he may specify; and if it is not paid on or before that day it is recoverable in a court of competent jurisdiction[9].

1 See the Local Government, Planning and Land Act 1980 ss 53–68 (as amended).
2 See the Local Government Finance Act 1988 Pt V (ss 76–88B) (as amended). As to revenue support grants see para 532 et seq post.
3 Ibid s 124(1). 'Financial year' means a period of 12 months beginning with 1 April: s 145(3). 'Chargeable financial years' means financial years beginning in 1990 and subsequent years: s 145(1).
4 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
5 Local Government Finance Act 1988 s 124(2). At the date at which this volume states the law no such orders had been made.
6 Ibid s 124(3).
7 Ibid s 124(4).
8 Ibid s 124(5). See also note 9 infra.
9 Ibid s 124(6). The Secretary of State may decide that a sum due under s 124(4) is to be recoverable partly by deduction and partly by payment, and in such a case the provisions of s 124(5) (see the text and note 8 supra) and s 124(6) have effect with appropriate modifications: s 124(7).

The Secretary of State may decide differently under s 124(5)–(7) as regards sums due from different authorities or as regards sums due from the same authority in respect of different financial years: s 124(8).

532. Revenue support grants and the reporting process. For each chargeable financial year[1] the Secretary of State[2] must pay a grant (a 'revenue support grant') to receiving authorities[3] and specified bodies[4] in accordance with the provisions of Part V of the Local Government Finance Act 1988[5]. For each chargeable financial year the Secretary of State must make a determination[6], stating:

(1) the amount of the grant for the year[7];
(2) what amount of the grant he proposes to pay to receiving authorities[8]; and
(3) what amount of the grant he proposes to pay to each specified body[9].

Before making a determination, the Secretary of State must:

(a) consult such representatives of local government as appear to him to be appropriate[10]; and
(b) obtain the Treasury's consent[11].

Such a determination must be specified in a report (a 'local government finance report')[12]. A local government finance report must also specify the basis (the 'basis of distribution') on which the Secretary of State proposes to distribute among receiving authorities the amount of revenue support grant which under Part V of the Local Government Finance Act 1988 falls to be paid to such authorities for the financial year to which the report relates (the 'financial year concerned')[13]. Before making the report the Secretary of State must notify to such representatives of local government as appear to him to be appropriate the general nature of the basis of distribution[14]. The report must be laid before the House of Commons[15] and, as soon as is reasonably practicable after the report is laid before the House of Commons, the Secretary of State must send a copy of it to each receiving authority[16].

Where a determination as regards revenue support grant has been made for a financial year and specified in a report which has been laid before the House of Commons the following provisions apply[17]. If the report is approved by resolution of the House of Commons, the Secretary of State must pay the amount stated in the determination as the amount of the revenue support grant for the year[18]. The Secretary of State must pay to receiving authorities the amount stated in the determination under head (2) above, and must pay to specified bodies the aggregate of the amounts stated in the determination under head (3) above[19]. Where a sum falls to be paid to a specified body by way of revenue support grant it must be paid at such time, or in instalments of such amounts and at such times, as the Secretary of State determines with the Treasury's consent; and any such time may fall within or after the financial year concerned[20].

It is likely to be difficult to obtain judicial review of decisions in relation to revenue support grants as they involve questions of political judgment[21].

1 For the meaning of 'chargeable financial years' see para 531 note 3 ante.

2 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

3 For these purposes, 'receiving authority' means any billing authority or major precepting authority: Local Government Finance Act 1988 s 76(1), (2) (s 76(2) substituted by the Local Government Finance Act 1992 s 104, Sch 10 Pt II para 8). 'Billing authority' has the same meaning as in the Local Government Finance Act 1992 Pt I (ss 1–69) (as amended) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) paras 606, 821): Local Government Finance Act 1988 s 144(2) (substituted by the Local Government Finance Act 1992 s 117(1), Sch 13 para 81). 'Major precepting authority' has the same meaning as in the Local Government Finance Act 1992 Pt I (as amended) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 601): Local Government Finance Act 1988 s 144(2) (as so substituted).

Where the Secretary of State was the receiving authority, in the period beginning on 1 April 2000 and ending with 2 July 2000, references to grant being paid or payable to a receiving authority are to grant being allocated, or liable to be allocated, for payment by him in accordance with the Greater London Authority Act 1999 s 102 (see LONDON

GOVERNMENT): Local Government Finance Act 1988 s 76(2A) (added by the Greater London Authority Act 1999 (Transitional and Consequential Finance Provisions) Order 1999, SI 1999/3435, art 2).

4 For these purposes, 'specified body' means any body which provides services for local authorities and is specified in regulations made by the Secretary of State under the Local Government Finance Act 1988 s 76(4); but a body is not a specified body as regards a financial year unless the regulations specifying it are in force before the year begins: s 76(1), (4). Before exercising the power to make regulations under s 76(4), the Secretary of State must consult such representatives of local government as appear to him to be appropriate: s 76(5). Any regulations made under the Local Government Act 1974 s 2(7) or the Local Government, Planning and Land Act 1980 s 56(9) (i e in relation to rate support grants: see para 531 ante) have effect for the purposes of the Local Government Finance Act 1988 s 76(4) as if they had been made under it: s 76(6). As to the regulations that have been made see, in relation to England, the Revenue Support Grant (Specified Bodies) Regulations 1992, SI 1992/89 (amended by SI 1993/139; SI 1995/3184; SI 1998/2995; SI 2000/718) and, in relation to Wales, the Revenue Support Grant (Specified Bodies) (Wales) Regulations 2000, SI 2000/718.

5 Local Government Finance Act 1988 s 78(1). The provisions referred to in the text are those of the Local Government Finance Act 1988 Pt V (ss 76–88B) (as amended).

6 Ibid s 78(2).

7 Ibid s 78(3)(a).

8 Ibid s 78(3)(b).

9 Ibid s 78(3)(c). Different amounts may be stated under s 78(3)(c) in relation to different specified bodies: s 78(4).

10 Ibid s 78(5)(a).

11 Ibid s 78(5)(b). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.

12 Ibid s 78A(1) (s 78A added by the Local Government Finance Act 1992 s 104, Sch 10 Pt II para 10).

13 Local Government Finance Act 1988 s 78A(2) (as added: see note 12 supra). For the financial year beginning on 1 April 2000, the local government finance report had to specify the basis of distribution of revenue support grant as if the Greater London Authority and functional bodies were in existence for the entire year: s 78A(2A) (s 78A as added (see note 12 supra); and s 78A(2A) added by the Greater London Authority Act 1999 (Transitional and Consequential Finance Provisions) Order 1999, SI 1999/3435, art 2). As to the Greater London Authority and the functional bodies see LONDON GOVERNMENT.

14 Local Government Finance Act 1988 s 78A(3) (as added see note 12 supra).

15 Ibid s 78A(4) (as added see note 12 supra).

16 Ibid s 78A(5) (as added: see note 12 supra).

17 Ibid s 79(1) (amended by the Local Government Finance Act 1992 Sch 10 Pt II para 11).

18 Local Government Finance Act 1988 s 79(2). The provisions of s 79(2), (3) (see the text to note 19 infra) must be read subject to the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, and the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613 (see para 544 post): see the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 4; and the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 5.

19 Local Government Finance Act 1988 s 79(3). See also note 18 supra. The amount falling to be paid to receiving authorities must be distributed among and paid to them in accordance with ss 82, 83 (both as amended) (see para 533 post): s 79(4) (amended by the Local Government Finance Act 1992 Sch 10 Pt II para 11). The amount to be paid to a particular specified body must be the amount stated in relation to it under the Local Government Finance Act 1988 s 78(3)(c) (see head (3) in the text; and note 9 supra): s 79(5).

20 Ibid s 79(6).

21 *R v Secretary of State for the Environment, ex p Avon County Council* (1990) 89 LGR 498; *R v Secretary of State for the Environment, ex p Hammersmith and Fulham London Borough Council* [1991] 1 AC 521. As to judicial review see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) para 58 et seq.

533. Calculation and payment of revenue support grants. As soon as is reasonably practicable after a local government finance report[1] for a

financial year[2] has been approved by resolution of the House of Commons, the Secretary of State[3] must calculate what sum, if any, falls to be paid to each receiving authority[4] by way of revenue support grant[5] for the year in accordance with the basis of distribution[6] specified in the report[7]. Where such a calculation is made, the Secretary of State must pay to each receiving authority any sum calculated as falling to be paid to it[8].

After making a calculation[9], the Secretary of State may, at any time before the end of the financial year following the financial year concerned, make one further calculation of what sum, if any, falls to be paid to each receiving authority by way of revenue support grant for the year in accordance with the specified basis of distribution[10]. Where such a further calculation is made and the sum it shows as falling to be paid to a receiving authority exceeds that shown as falling to be paid to it by the calculation for the financial year concerned[11], the Secretary of State must pay to the authority a sum equal to the difference[12]; and where the sum it shows as falling to be paid to a receiving authority is less than that shown as falling to be paid to it by the calculation for the financial year concerned[13], a sum equal to the difference must be paid by the authority to the Secretary of State on such day after the end of the financial year concerned as he may specify[14].

If the Secretary of State decides that he will leave out of account information[15] received by him after a particular date in making a calculation under the above provisions, the calculation must be made accordingly; and he may decide different dates for different kinds of information[16]. This applies only if the Secretary of State informs each receiving authority in writing of his decision and of the date (or the dates and kinds of information) concerned; but he may do this at any time before the calculation is made, whether before or after a determination is made[17] for the year[18].

As soon as is reasonably practicable after making a calculation under these provisions[19] the Secretary of State must inform each receiving authority of the sum he calculates as falling to be paid to it by way of revenue support grant for the year[20]. If the Secretary of State calculates in the case of a particular receiving authority that no such sum falls to be paid to it, he must inform the receiving authority of that fact[21].

The calculation used to distribute revenue support grant to local authorities is, in practice, often referred to as the 'standard spending assessment' or 'SSA'[22].

1 For the meaning of 'local government finance report' see para 532 ante.
2 For the meaning of 'financial year' see para 531 note 3 ante.
3 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
4 For the meaning of 'receiving authority' see para 532 note 3 ante.
5 For the meaning of 'revenue support grant' see para 532 ante.
6 For the meaning of 'basis of distribution' see para 532 ante.
7 Local Government Finance Act 1988 s 82(1) (s 82 substituted by the Local Government Finance Act 1992 s 104, Sch 10 Pt II para 13). For the financial year beginning on 1 April 2000, the sum payable to the Greater London Authority by way of revenue support grant is to be calculated as if the Greater London Authority and functional bodies were in existence for the entire year: Local Government Finance Act 1988 s 82(1A) (added by the Greater London Authority Act 1999 (Transitional and Consequential Finance Provisions) Order 1999, SI 1999/3435, art 2). As to the Greater London Authority and the functional bodies see LONDON GOVERNMENT.

8 Local Government Finance Act 1988 s 83(1). The sum must be paid in instalments of such amounts, and at such times in the financial year concerned, as the Secretary of State determines with the Treasury's consent: s 83(2). For the meaning of 'financial year concerned' see para 532 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.

Before 3 July 2000, the instalments of the amount calculated as payable to the Greater London Authority had to be applied by the Secretary of State in accordance with the Greater London Authority Act 1999 s 102 (see LONDON GOVERNMENT) and subsequent instalments must be paid to the Greater London Authority: Local Government Finance Act 1988 s 83(2A) (added by the Greater London Authority Act 1999 (Transitional and Consequential Finance Provisions) Order 1999, SI 1999/3435, art 2).

The provisions of the Local Government Finance Act 1988 s 83 (as amended) must be read subject to the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, and the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613 (see para 544 post): see the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 4; and the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 5.

9 Ie under the Local Government Finance Act 1988 s 82(1) (as substituted).

10 Ibid s 82(2) (as substituted: see note 7 supra). The power to make a calculation under s 82(2) (as substituted) is not exercisable after the approval by resolution of the House of Commons of any amending report made under s 84A (as added) (see para 534 post) in relation to the local government finance report: s 82(3) (as so substituted).

11 Ie under ibid s 82(1) (as substituted).

12 Ibid s 83(3). The sum must be paid at such time, or in instalments of such amounts and at such times, as the Secretary of State determines with the Treasury's consent; but any such time must fall after the end of the financial year concerned: s 83(4).

13 Ie under ibid s 82(1) (as substituted).

14 Ibid s 83(5). If the sum is not paid on or before the specified day, it is recoverable in a court of competent jurisdiction: see s 83(5).

15 Unless the context otherwise requires, 'information' includes accounts, estimates and returns: ibid s 146(5A) (added by the Local Government and Housing Act 1989 s 139, Sch 5 paras 75, 79(3)).

16 Local Government Finance Act 1988 s 82(4) (as substituted: see note 7 supra).

17 Ie under ibid s 78: see para 532 ante.

18 Ibid s 82(5) (as substituted: see note 7 supra).

19 Ie under ibid s 82(1) (as substituted) or s 82(2) (as substituted).

20 See ibid s 82(6) (as substituted: see note 7 supra).

21 Ibid s 82(7) (as substituted: see note 7 supra).

22 A total SSA for a local authority is made up of component SSAs for each service (eg education) that the authority provides.

534. Amending reports. After a local government finance report[1] has been made the Secretary of State[2] may, at any time before the end of the financial year[3] following the financial year concerned[4], make in relation to the report one or more amending reports[5]. Such an amending report must contain amendments to the basis of distribution[6] specified in the local government finance report[7]. Before making the report the Secretary of State must notify to such representatives of local government as appear to him to be appropriate the general nature of the amendments which he proposes to make[8]. The report must be laid before the House of Commons[9] and, as soon as is reasonably practicable after the report is laid before the House of Commons, the Secretary of State must send a copy of it to each receiving authority[10].

As soon as is reasonably practicable after an amending report has been approved by resolution of the House of Commons, the Secretary of State must calculate what sum, if any, falls to be paid to each receiving authority by way of revenue support grant[11] for the financial year concerned in accordance with the basis of distribution specified in the local government

finance report as amended by the amending report[12]. After making such a calculation, the Secretary of State may make one further calculation of what sum, if any, falls to be paid to each receiving authority by way of revenue support grant for the year in accordance with that basis of distribution[13].

Where a calculation (the 'relevant calculation') is made[14] in relation to an amending report[15] and the sum shown by the relevant calculation as falling to be paid to a receiving authority for the financial year concerned exceeds that shown as falling to be paid to it by the relevant previous calculation[16], the Secretary of State must pay to the authority a sum equal to the difference[17]; and where the sum shown by the relevant calculation as falling to be paid to a receiving authority for the financial year concerned is less than that shown as falling to be paid to it by the relevant previous calculation, a sum equal to the difference must be paid by the authority to the Secretary of State[18].

1 For the meaning of 'local government finance report' see para 532 ante.
2 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
3 For the meaning of 'financial year' see para 531 note 3 ante.
4 For the meaning of 'financial year concerned' see para 532 ante.
5 Local Government Finance Act 1988 s 84A(1) (s 84A added by the Local Government Finance Act 1992 s 104, Sch 10 Pt II para 15). Where an amending report has been approved by resolution of the House of Commons, the Secretary of State may not make a subsequent amending report in relation to the same local government finance report: Local Government Finance Act 1988 s 84A(6) (as so added).
6 For the meaning of 'basis of distribution' see para 532 ante.
7 Local Government Finance Act 1988 s 84A(2) (as added: see note 5 supra).
8 Ibid s 84A(3) (as added: see note 5 supra).
9 Ibid s 84A(4) (as added: see note 5 supra).
10 Ibid s 84A(5) (as added: see note 5 supra). For the meaning of 'receiving authority' see para 532 note 3 ante.
11 For the meaning of 'revenue support grant' see para 532 ante.
12 Local Government Finance Act 1988 s 84B(1) (s 84B added by the Local Government Finance Act 1992 Sch 10 Pt II para 15). See also note 13 infra.
13 Local Government Finance Act 1988 s 84B(2) (as added: see note 12 supra). A calculation may not be made under s 84B(2) (as added) after whichever is the later of: (1) the end of the financial year following the financial year concerned; and (2) the end of the period of three months beginning with the day on which the amending report is approved by resolution of the House of Commons: s 84B(3) (as so added).

The provisions of the Local Government Finance Act 1988 s 82(4)–(7) (as substituted) (see para 533 ante) apply in relation to calculations made under s 84B(1), (2) (as added) as they apply in relation to calculations made under s 82(1), (2) (as substituted) (see para 533 ante): s 84B(4) (as so added).
14 Ie under ibid s 84B(1) (as added) or s 84B(2) (as added).
15 Ibid s 84C(1) (s 84C added by the Local Government Finance Act 1992 s 104, Sch 10 Pt II para 15). The provisions of the Local Government Finance Act 1988 s 84C (as added) must be read subject to the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, and the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613 (see para 544 post): see the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 4; and the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 5.
16 For these purposes, 'relevant previous calculation' means:
   (1) in relation to a calculation made under the Local Government Finance Act 1988 s 84B(1) (as added), the calculation under s 82(1) (as substituted) (see para 533 ante) or, where a further calculation has been made under s 82(2) (as substituted) (see para 533 ante), that further calculation (see s 84C(6)(a) (as added: see note 15 supra));
   (2) in relation to a calculation made under s 84B(2) (as added), the calculation made under s 84B(1) (as added) (see s 84C(6)(b) (as so added)).

17 Local Government Finance Act 1988 s 84C(2) (as added: see note 15 supra). The sum must be paid at such times, or in instalments of such amounts and at such times, as the Secretary of State determines with the Treasury's consent; but any such time must fall after the end of the financial year in which the amending report was made: s 84C(3) (as so added). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.

18 Ibid s 84C(4) (as added: see note 15 supra). The sum must be paid on such day after the end of the financial year in which the amending report was made as the Secretary of State may specify; and if it is not paid on or before that day it is recoverable in a court of competent jurisdiction: s 84C(5) (as so added).

(ii) Further Grants

535. **Additional revenue support grants.** Where a local government finance report[1] for a chargeable financial year[2] has been approved by the House of Commons, and before the year ends the Secretary of State[3] forms the view that fresh circumstances affecting the finances of local authorities have arisen since the approval[4], then, for the year concerned, the Secretary of State may pay[5] a grant ('additional grant') to receiving authorities[6].

Where the Secretary of State proposes to pay additional grant for a financial year he must make a determination[7], stating:

(1) the amount of the grant for the year[8]; and

(2) the basis on which he proposes to distribute it among receiving authorities[9].

Before making a determination the Secretary of State must obtain the Treasury's consent[10]. A determination must be specified in a report and the report must be laid before the House of Commons[11]. As soon as is reasonably practicable after the report is laid before the House of Commons, the Secretary of State must send a copy of it to each receiving authority[12].

Where a determination as regards additional grant has been made for a financial year and specified in a report which has been laid before the House of Commons[13] and the report is approved by resolution of the House of Commons:

(a) the Secretary of State must pay the amount stated in the determination as the amount of the additional grant for the year[14]; and

(b) the amount must be distributed on the basis stated in the determination[15].

Where a sum falls to be paid to a receiving authority by way of additional grant it must be paid at such time, or in instalments of such amounts and at such times, as the Secretary of State determines with the Treasury's consent; and any such time may fall within or after the financial year concerned[16].

1 For the meaning of 'local government finance report' see para 532 ante.

2 For the meanings of 'chargeable financial years' and 'financial year' see para 531 note 3 ante.

3 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

4 Local Government Finance Act 1988 s 85(1) (amended by the Local Government Finance Act 1992 s 104, Sch 10 Pt II para 16).

5 Ie in accordance with the Local Government Finance Act 1988 Pt V (ss 76–88B) (as amended).

6 Ibid s 85(2). For the meaning of 'receiving authority' see para 532 note 3 ante.

7 Ibid s 85(3).

8 Ibid s 85(4)(a).
9 Ibid s 85(4)(b).
10 Ibid s 85(5). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.
11 Ibid s 85(6).
12 Ibid s 85(7) (amended by the Local Government Finance Act 1992 Sch 10 Pt II para 16).
13 Local Government Finance Act 1988 s 86(1).
14 Ibid s 86(2)(a). The provisions of s 86(2), (3) must be read subject to the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, and the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613 (see para 544 post): see the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 4; and the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 5.
15 Local Government Finance Act 1988 s 86(2)(b). See also note 14 supra.
16 Ibid s 86(3). See also note 14 supra.

536. Transport grants. The Secretary of State[1] must pay to a defined council[2] a grant for a chargeable financial year[3] if he accepts that at least some of its estimated relevant transport expenditure[4] for the year is appropriate to be taken into account for these purposes[5]. The amount of the grant is a proportion of so much of the council's estimated relevant transport expenditure for the year as he so accepts[6]. The proportion is such as is determined for the year by the Secretary of State and must be the same as regards each council to which a grant is paid for the year under these provisions[7]. A grant must be paid at such time, or in instalments of such amounts and at such times, as the Secretary of State thinks fit; and any such time need not fall within the financial year concerned[8].

In deciding whether to accept any of a council's estimated relevant transport expenditure for a financial year, and how much of it to accept, the Secretary of State may have regard to the following matters (in addition to any other matters he thinks fit):

(1) whether the council's relevant transport expenditure[9] for any preceding financial year or years is greater or smaller than its estimated relevant transport expenditure for that year or those years[10];
(2) the extent (if any) to which it is greater or smaller[11].

The total accepted as regards all defined councils for a particular financial year must not exceed such amount as is approved by the Treasury for the year[12].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
2 For these purposes, each of the following is a defined council: (1) a county council; (2) a county borough council; and (3) a metropolitan district council: Local Government Finance Act 1988 s 88(1), (2) (amended by the Local Government Wales Act 1994 s 66(6), Sch 16 para 85; and the Greater London Authority Act 1999 ss 159(8), 423, Sch 34 Pt II).
3 For the meanings of 'chargeable financial years' and 'financial year' see para 531 note 3 ante.
4 A council's estimated relevant transport expenditure for a financial year is the expenditure it estimates it will incur in the year in connection with:
   (1) highways or the regulation of traffic, where the council is English (Local Government Finance Act 1988 s 88(1), (5)(a)); or
   (2) highways, the regulation of traffic or public transport, where the council is Welsh (s 88(1), (5)(b)).

   In making the estimate, however, expenditure must be left out of account unless, at the time the estimate is made, it is expenditure for capital purposes within the meaning of the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended) (see para 558 et

seq post): Local Government Finance Act 1988 s 88(1), (6) (amended by the Local Government and Housing Act 1989 s 139, Sch 5 paras 1, 60).

5 Local Government Finance Act 1988 s 87(1). Certain grants under the Transport Act 1968 relating to highways and public transport have been largely discontinued: see the Local Government Act 1974 s 6(8), Sch 1 Pt II.

6 Local Government Finance Act 1988 s 87(2).

7 Ibid s 87(3).

8 Ibid s 87(4).

9 A council's relevant transport expenditure for a financial year is the expenditure it calculates it incurred in the year in connection with:

(1) highways or the regulation of traffic, where the council is English (ibid s 88(1), (3)(a)); or

(2) highways, the regulation of traffic or public transport, where the council is Welsh (s 88(1), (3)(b)).

In making the calculation, however, expenditure must be left out of account unless, at the time the calculation is made, it is expenditure for capital purposes within the meaning of the Local Government and Housing Act 1989 Pt IV (as amended) (see para 558 et seq post): Local Government Finance Act 1988 s 88(1), (4) (amended by the Local Government and Housing Act 1989 Sch 5 paras 1, 60).

10 Local Government Finance Act 1988 s 87(5)(a).

11 Ibid s 87(5)(b).

12 Ibid s 87(6). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.

537. Council tax grants. The Secretary of State[1] may by regulations make provision for reduced amounts of council tax[2] for certain cases[3], and has powers to make specific grants to meet the shortfalls this may create.

If regulations relating to reduced amounts of council tax[4] have effect as regards a financial year[5], the Secretary of State may, with the consent of the Treasury[6], pay a grant to a billing authority[7] as regards that financial year[8]. The amount of the grant is such as the Secretary of State may with the consent of the Treasury determine[9]. A grant must be paid at such time, or in instalments of such amounts and at such times, as the Secretary of State may with the consent of the Treasury determine[10]. In making any payment of a grant the Secretary of State may impose such conditions as he may with the consent of the Treasury determine; and the conditions may relate to the repayment in specified circumstances of all or part of the amount paid, or otherwise[11].

In deciding whether to pay a grant under these provisions, and in determining the amount of any such grant, the Secretary of State must have regard to his estimate of any amount which, in consequence of the regulations, the authority might reasonably be expected to lose, or to have lost, by way of payments in respect of the council tax set by it for the financial year concerned[12].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

2 As to council tax generally see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 817 et seq.

3 See the Local Government Finance Act 1992 s 13; and RATING AND COUNCIL TAX vol 39(1) (Reissue) para 848.

4 Ie regulations under ibid s 13: see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 848.

5 For the meaning of 'financial year' see para 531 note 3 ante.

6 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.

7 For the meaning of 'billing authority' see para 532 note 3 ante.

8 Local Government Finance Act 1988 s 88A(1) (s 88A added by the Local Government and Housing Act 1989 s 139, Sch 5 paras 1, 61, 79(3); and substituted by the Local Government Finance Act 1992 s 104, Sch 10 Pt II para 18).
9 Local Government Finance Act 1988 s 88A(2) (as added and substituted: see note 8 supra).
10 Ibid s 88A(3) (as added and substituted: see note 8 supra).
11 Ibid s 88A(4) (as added and substituted: see note 8 supra).
12 Ibid s 88A(5) (as added and substituted: see note 8 supra).

538. Special grants. The Secretary of State[1] may, with the consent of the Treasury[2], pay a grant (a 'special grant') to a relevant authority[3]. Where the Secretary of State proposes to make one special grant he must, before making the grant, make a determination stating with respect to the grant:

(1) to which authority it is to be paid[4];
(2) the purpose for which it is to be paid[5]; and
(3) the amount of the grant or the manner in which the amount is to be calculated[6].

Where the Secretary of State proposes to make two or more special grants to different authorities he must, before making the grants, make a determination stating with respect to the grants:

(a) to which authorities they are to be paid[7];
(b) the purpose for which they are to be paid[8]; and
(c) either (i) the amount of the grant which he proposes to pay to each authority or the manner in which the amount is to be calculated[9]; or (ii) the total amount which he proposes to distribute among the authorities by way of special grants and the basis on which he proposes to distribute that amount[10].

A determination under these provisions[11] must be made with the consent of the Treasury and must be specified in a report (a 'special grant report'), which must contain such explanation as the Secretary of State considers desirable of the main features of the determination[12]. A special grant report must be laid before the House of Commons and, as soon as is reasonably practicable after the report has been so laid, the Secretary of State must send a copy of it to any relevant authority to whom a special grant is proposed to be paid in accordance with the determination in the report[13]. No special grant may be paid unless the special grant report containing the determination relating to the grant has been approved by a resolution of the House of Commons[14]. A special grant report may specify conditions which the Secretary of State, with the consent of the Treasury, intends to impose on the payment of (or of any instalment of) any special grant to which the report relates[15]. The conditions may (A) require the provision of returns or other information[16] before a payment is made to the relevant authority concerned[17]; or (B) relate to the use of the amount paid, or to the repayment in specified circumstances of all or part of the amount paid, or otherwise[18].

A special grant must be paid at such time or in instalments of such amounts and at such times as the Secretary of State may, with the consent of the Treasury, determine[19].

1 As to the Secretary of State see para 106 ante. The functions of the Secretary of State under the Local Government Finance Act 1988 s 88B (as added), so far as they relate to police authorities in Wales, are exercisable by the National Assembly for Wales concurrently with the Secretary of State: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and para 107 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

2 In relation to Wales functions under the Local Government Finance Act 1988 s 88B (as added) are exercisable by the National Assembly for Wales free from the requirements for Treasury consent: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.
3 Local Government Finance Act 1988 s 88B(1) (s 88B added by the Local Government Finance Act 1992 s 104, Sch 10 Pt II para 18). For these purposes, each of the following is a relevant authority: (1) a receiving authority; (2) a metropolitan county passenger transport authority established by the Local Government Act 1985 s 28 (see para 55 ante): Local Government Finance Act 1988 s 88B(9) (as so added). For the meaning of 'receiving authority' see para 532 note 3 ante. As to metropolitan county passenger transport authorities see para 55 ante.
4 Ibid s 88B(2)(a) (as added: see note 3 supra).
5 Ibid s 88B(2)(b) (as added: see note 3 supra).
6 Ibid s 88B(2)(c) (as added: see note 3 supra).
7 Ibid s 88B(3)(a) (as added: see note 3 supra).
8 Ibid s 88B(3)(b) (as added: see note 3 supra).
9 Ibid s 88B(3)(c)(i) (as added: see note 3 supra).
10 Ibid s 88B(3)(c)(ii) (as added: see note 3 supra).
11 Ie under ibid s 88B(2) (as added) or s 88B(3) (as added).
12 Ibid s 88B(4) (as added: see note 3 supra).
13 Ibid s 88B(5) (as added: see note 3 supra).
14 Ibid s 88B(6) (as added: see note 3 supra).
15 Ibid s 88B(7) (as added: see note 3 supra).
16 For the meaning of 'information' see para 533 note 15 ante.
17 Local Government Finance Act 1988 s 88B(7)(a) (as added: see note 3 supra).
18 Ibid s 88B(7)(b) (as added: see note 3 supra).
19 Ibid s 88B(8) (as added: see note 3 supra). This provision is without prejudice to compliance with any conditions imposed as mentioned in s 88B(7) (as added): see s 88B(8) (as so added).

539. Grants for specific services. Certain enactments provide for specific grants in aid of revenue expenditure of local authorities. These grants are paid to the particular local authority responsible for a function or service and in accordance with any conditions and limits in the appropriate enactment.

Specific grants are payable, for instance, in respect of police[1], civil defence[2], magistrates' courts[3], derelict land[4], ethnic minorities[5], special social need in urban areas[6], and provision of employment for disabled persons[7].

The Secretary of State[8] may from time to time by order made by statutory instrument provide that, with effect from such year as may be specified in the order, no grant may be paid under any such local authority grant provision[9] as may be so specified or that no such grant may be paid except in respect of expenditure of a description so specified[10]. No such order has effect unless it is approved by a resolution of each House of Parliament[11].

1 See the Police Act 1996 ss 46, 47, 48 (all as amended); and POLICE vol 36(1) (Reissue) paras 370–371. As to grants financing new police authorities see s 94; and POLICE vol 36(1) (Reissue) para 374. As to grants by local authorities to police authorities see s 92 (as amended); and POLICE vol 36(1) (Reissue) para 373.
2 See the Civil Defence Act 1948 s 3 (as amended); and WAR AND ARMED CONFLICT vol 49(1) (Reissue) para 660.
3 See the Justices of the Peace Act 1997 s 57 (as amended); and MAGISTRATES.
4 See the Derelict Land Act 1982 s 1 (as amended); and TRADE, INDUSTRY AND INDUSTRIAL RELATIONS.
5 See the Local Government Act 1966 s 11 (as substituted and amended); and para 540 post.
6 See the Local Government Grants (Social Need) Act 1969; and para 540 post.
7 See the Disabled Persons (Employment) Act 1944 s 15(5)(c); and EMPLOYMENT vol 16 (2000 Reissue) para 380.

8 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

9 For these purposes, 'local authority grant provision' means an enactment providing for the payment of grants to local authorities (within the meaning of the enactment concerned) in respect of expenditure incurred in connection with a specific function: Local Government Act 1974 s 8(5), Sch 1 Pt III para 11(2).

10 Ibid Sch 1 Pt III para 11(1). An order under Sch 1 Pt III para 11 may contain such provisions as appear to the Secretary of State to be necessary or proper in consequence of the termination of the grants, including provision amending, repealing or revoking, with or without savings, any enactment or instrument made under an enactment: Sch 1 Pt III para 11(3).

11 Ibid Sch 1 Pt III para 11(4).

540. Grants for special social needs. The Secretary of State[1] may pay, to local authorities[2] which in his opinion are required to make special provision in the exercise of any of their functions in consequence of the presence within their areas of persons belonging to ethnic minorities whose language or customs differ from those of the rest of the community, grants of such amounts as he may with the consent of the Treasury[3] determine on account of expenditure in respect of the employment of staff[4].

Out of money provided by Parliament the Secretary of State may also pay grants, of such amounts as he may with the consent of the Treasury determine, to local authorities which in his opinion are required in the exercise of any of their functions to incur expenditure by reason of the existence in any urban area of special social need[5].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

2 For these purposes, 'local authority' means the council of a county, district, London borough or county borough, the Common Council of the City of London, the Council of the Isles of Scilly, the London Fire and Emergency Planning Authority, a police authority established under the Police Act 1996 s 3 (see POLICE vol 36(1) (Reissue) para 316 et seq), the Metropolitan Police Authority and a joint authority established by the Local Government Act 1985 Pt IV (ss 23–42) (as amended) (see para 53 et seq ante): Local Government Act 1966 s 11(2) (substituted by the London Government (Amendment) Act 1993 s 1; and amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 3; the Police Act 1996 s 103, Sch 7 para 1(2)(c); and the Greater London Authority Act 1999 ss 325, 328, Sch 27 para 19, Sch 29 Pt I para 7); Local Government Act 1966 s 41(1) (amended by the Statute Law (Repeals) Act 1978; the Local Government Act 1985 s 102, Sch 17; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 27; and by virtue of the Local Government Act 1972 s 179(1), (3)); Local Government Grants (Social Need) Act 1969 s 1(3) (amended by the Local Government Act 1985 s 84, Sch 14 para 44; the Education Reform Act 1988 s 237, Sch 13 Pt I; the Police and Magistrates' Courts Act 1994 Sch 4 Pt I para 4; the Police Act 1996 Sch 7 para 1(2)(e); and the Greater London Authority Act 1999 Sch 27 para 23, Sch 29 Pt I para 10). For the meaning of 'local authority' generally see para 24 ante.

3 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.

4 See the Local Government Act 1966 s 11(1) (substituted by the London Government (Amendment) Act 1993 s 1).

5 Local Government Grants (Social Need) Act 1969 s 1(1). The grants may be paid at such times, subject to such conditions and on account of such expenditure as the Secretary of State may determine: s 1(2). As to urban development see TOWN AND COUNTRY PLANNING vol 46 (Reissue) para 1258 et seq; and as to urban regeneration see TRADE, INDUSTRY AND INDUSTRIAL RELATIONS.

541. Emergency financial assistance. In any case where an emergency or disaster occurs involving destruction of or danger to life or property[1] and, as

a result, one or more local authorities[2] incur expenditure[3] on, or in connection with, the taking of immediate action (whether by the carrying out of works or otherwise) to safeguard life or property, or to prevent suffering or severe inconvenience, in the area or among the inhabitants[4], the Secretary of State[5] may establish a scheme for the giving of financial assistance to those authorities in respect of that expenditure[6]. Financial assistance given pursuant to a scheme takes the form of grants paid by the Secretary of State with the consent of the Treasury[7]. The terms and conditions of a scheme are to be such as the Secretary of State considers appropriate to the circumstances of the particular emergency or disaster concerned[8]. A scheme may: (1) make the payments of grants conditional upon the making of claims of a description specified in the scheme[9]; (2) make provision with respect to the expenditure qualifying for grant and the rates and amounts of grants[10]; (3) make provision in certain specified circumstances for the repayment of any grant, in whole or in part[11]; and (4) make different provision for different local authorities or descriptions of authorities and for different areas[12].

1 Local Government and Housing Act 1989 s 155(1)(a).

2 For these purposes, any reference to a 'local authority' is a reference to: a county council; a county borough council; a district council; the Greater London Authority; a London borough council; the Common Council of the City of London; the Council of the Isles of Scilly; a police authority established under the Police Act 1996 s 3 (see POLICE vol 36(1) (Reissue) para 316 et seq); the Service Authority for the National Crime Squad; or a joint authority established by the Local Government Act 1985 Pt IV (ss 23–42) (as amended) (see para 53 et seq ante), other than a metropolitan county passenger transport authority: Local Government and Housing Act 1989 s 155(4) (amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 42; the Police Act 1996 s 103(1), Sch 7 Pt I para 1; the Police Act 1997 s 88, Sch 6 para 31; the Greater London Authority Act 1999 ss 104(1), (3), 423, Sch 34 Pt I; and the Local Government Reorganisation (Wales) (Consequential Amendments No 3) Order 1996, SI 1996/3071, art 2, Schedule para 3(8)). For the meaning of 'local authority' generally see para 24 ante. As to areas and authorities in England see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante. As to the Service Authority for the National Crime Squad see POLICE vol 36(1) (Reissue) para 261.

Expenditure incurred as mentioned in the Local Government and Housing Act 1989 s 155(1) by the London Fire and Emergency Planning Authority, the Metropolitan Police Authority or Transport for London in respect of places or areas within Greater London are to be treated for these purposes as expenditure so incurred by the Greater London Authority (and, accordingly, as so incurred by a local authority): s 155(1A) (s 155(1A), (1B) added by the Greater London Authority Act 1999 s 104(1), (2)). As to the London Fire and Emergency Planning Authority see FIRE SERVICES vol 18(2) (Reissue) para 17; and LONDON GOVERNMENT. As to the Metropolitan Police Authority see POLICE vol 36(1) (Reissue) para 314. As to Transport for London see LONDON GOVERNMENT. To the extent that any financial assistance given to the Greater London Authority under these provisions is referable to expenditure incurred by a body mentioned in the Local Government and Housing Act 1989 s 155(1A) (as added), the financial assistance is to be treated for the purposes of the Greater London Authority Act 1999 s 103 (see LONDON GOVERNMENT) as a payment made to the Greater London Authority for the purposes of that body: Local Government and Housing Act 1989 s 155(1B) (as so added).

3 The reference in ibid s 155(1)(b) to expenditure incurred by a local authority includes expenditure incurred in defraying, or contributing towards defraying, expenditure incurred by a parish or community council: s 155(6). As to expenditure in the case of emergencies or disasters see para 521 ante.

4 Ibid s 155(1)(b).

5 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

6 Local Government and Housing Act 1989 s 155(1).

7 Ibid s 155(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.
8 See ibid s 155(2).
9 Ibid s 155(3)(a).
10 Ibid s 155(3)(b).
11 Ibid s 155(3)(c).
12 Ibid s 155(3)(d).

(iii) Administrative Arrangements for Grants

542. Separate administration in England and Wales. The provisions of Part V of the Local Government Finance Act 1988[1] apply separately, and must be administered separately, in England and Wales[2]. In particular, for England and Wales respectively, separate local government finance reports[3] and separate amending reports[4] must be made[5].

The provisions of Part V of the Local Government Finance Act 1988 must be construed accordingly so that (for instance) references to authorities must be read as references to those in England or Wales, as the case may be[6].

1 Ie the Local Government Finance Act 1988 Pt V (ss 76–88B) (as amended).
2 Ibid s 140(1) (amended by the Local Government Finance Act 1992 s 117(1), Sch 13 para 78).
3 Local Government Finance Act 1988 s 140(2)(d) (substituted by the Local Government Finance Act 1992 Sch 13 para 78).
4 Ie under the Local Government Finance Act 1988 s 84A (as added): see para 534 ante.
5 Ibid s 140(2)(e) (substituted by the Local Government Finance Act 1992 Sch 13 para 78).
6 Local Government Finance Act 1988 s 140(3) (amended by the Local Government Finance Act 1992 Sch 13 para 78). Any power conferred by the Local Government Finance Act 1988 on the Secretary of State or the Treasury may be exercised differently for England and Wales, whether or not it is exercised separately; and this does not prejudice the generality of s 143(1) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 604): s 140(4). As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.

543. Power to make regulations relating to set off. The Secretary of State[1] may make regulations[2] in relation to any case where: (1) he is liable to pay to a receiving authority[3] at any time an amount or amounts[4]; and (2) the authority is liable to pay an amount or amounts to him at the same time[5].

The regulations may provide that if the total of the amount or amounts mentioned in head (1) above exceeds the total of the amount or amounts mentioned in head (2) above, the Secretary of State may set off the latter in paying the former[6]; and that if the total of the amount or amounts mentioned in head (2) above exceeds the total of the amount or amounts mentioned in head (1) above, the authority is to set off the latter in paying the former[7]. The regulations may also provide that if the total of the amount or amounts mentioned in head (1) above is the same as the total of the amount or amounts mentioned in head (2) above, no payment need be made[8]. The regulations may include provision (a) treating any liability as discharged accordingly[9]; (b) requiring prescribed provisions of the Local Government Finance Act 1988 to be read subject to the regulations[10]; (c) requiring prescribed provisions of the Act to be read as if references to sums received or payments made were to sums or payments which would have been received or made apart from the regulations[11].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
2 As to the regulations made see the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996; the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613; and para 544 post.
3 Each of the following is a receiving authority: (1) a billing authority; (2) a major precepting authority: Local Government Finance Act 1988 s 141(6) (substituted by the Local Government Finance Act 1992 s 117(1), Sch 13 para 79(1)). See also para 532 note 3 ante. For the meaning of 'billing authority' see para 532 note 3 ante; and for the meaning of 'major precepting authority' see para 532 note 3 ante.
4 Local Government Finance Act 1988 s 141(1)(a). The liability referred to in the text is the liability to pay under s 83 (as amended) (see para 533 ante), s 84C (as added) (see para 534 ante) and s 86 (as amended) (see para 535 ante): see s 141(1)(a), (7) (substituted by the Local Government Finance Act 1992 Sch 13 para 79(1)).
5 Local Government Finance Act 1988 s 141(1)(b). The liability referred to in the text is the liability to pay under s 83 (as amended) (see para 533 ante) and s 84C (as added) (see para 534 ante): see s 141(1)(b), (8) (substituted by the Local Government Finance Act 1992 Sch 13 para 79(1)).
6 Local Government Finance Act 1988 s 141(2).
7 Ibid s 141(3).
8 Ibid s 141(4).
9 Ibid s 141(5)(a).
10 Ibid s 141(5)(b).
11 Ibid s 141(5)(c).

544. Power to set off. Regulations[1] have been made providing for the set off of payments where: (1) the Secretary of State[2] is liable to pay[3] to a receiving authority[4] at any time an amount or amounts[5]; and (2) the authority is liable to pay[6] an amount or amounts to him at the same time[7].

If the total of the amount or amounts mentioned in head (1) above exceeds the total of the amount or amounts mentioned in head (2) above, the Secretary of State may set off the latter in paying the former[8]; and if the total of the amount or amounts mentioned in head (2) above exceeds the total of the amount or amounts mentioned in head (1) above, the receiving authority is to set off the latter in paying the former[9]. If the total of the amount or amounts mentioned in head (1) above is the same as the total of the amount or amounts mentioned in head (2) above, no payment need be made[10].

1 Ie the Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996 (see reg 1), and the Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613 (see reg 1). These regulations are made under the Local Government Finance Act 1988 s 141 (as amended): see para 543 ante.
2 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
3 The liability referred to in the text is the liability to pay under the Local Government Finance Act 1988 s 83 (as amended) (see para 533 ante), s 84C (as added) (see para 534 ante) and s 86 (as amended) (see para 535 ante).
4 For the meaning of 'receiving authority' see para 543 note 3 ante. See also para 532 note 3 ante.
5 Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 2(1)(a); Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 3(1)(a).
6 The liability referred to in the text is the liability to pay under the Local Government Finance Act 1988 s 83 (as amended) (see para 533 ante), s 84C (as added) (see para 534 ante) and s 86 (as amended) (see para 535 ante).
7 Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 2(1)(b); Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 3(1)(b).

8 Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 2(2); Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 3(2). Where the Secretary of State exercises these powers, any liability of the receiving authority which has been set off in accordance with these provisions, and the part of the liability of the Secretary of State against which that liability has been set off, are to be treated as discharged: Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 3(1); Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 4(1).

9 Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 2(3); Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 3(3). Where a receiving authority sets off any amount in accordance with these provisions, any liability of the Secretary of State which is so set off, and the part of the liability of the authority against which that liability has been set off, are to be treated as discharged: Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 3(2); Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 4(2).

10 Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 2(4); Local Government Finance (Payments) (Welsh Authorities) Regulations 1993, SI 1993/613, reg 3(4). Where in accordance with these provisions no payment is made by the Secretary of State or an English receiving authority, their respective liabilities which are taken into account are to be treated as discharged: Local Government Finance (Payments) (English Authorities) Regulations 1992, SI 1992/2996, reg 3(3).

(5) FUNDS

(i) General Funds and Collection Funds

545. Establishment and maintenance of general funds. Every relevant authority[1] is required to establish, and then maintain, a fund (called the 'general fund') in accordance with Part VI of the Local Government Finance Act 1988[2]. The general fund had to be established on 1 April 1990[3]. In the case of a district council subsequently established for an area by an order[4], the general fund must be established on the date on which by virtue of the order the structural or boundary change[5] affecting the area comes into force[6]. In the case of:

(1) a county council which is established by such an order, to which the functions of district councils in relation to the county council's area are transferred by or in consequence of the order[7]; or

(2) an existing county council, to which the functions of district councils in relation to the county council's area are transferred by or in consequence of such an order[8],

the general fund must be established on the date on which by virtue of the order the structural change comes into force ('the reorganisation date')[9]. In the case of the Greater London Authority, the general fund must be established on a date specified in regulations[10].

The Secretary of State[11] may make regulations:

(a) about the relationship of a relevant authority's general fund to its other funds[12];

(b) providing for assets falling within a relevant authority's general fund to be held in separate funds within the general fund[13].

The regulations may provide that any fund established by a relevant authority on or after 1 April 1990, other than its collection fund or a trust fund, is to be maintained as a separate fund falling within its general fund[14]. The regulations may provide that such assets as are transferred to a relevant

authority's general fund[15] and fall within a prescribed description must be held in separate funds falling within the general fund; and the number and composition of the separate funds must be such as are prescribed[16].

1 Each of the following is a relevant authority:
   (1) a district council (Local Government Finance Act 1988 s 91(1)(a));
   (2) a county council to which have been transferred, by or in consequence of an order under the Local Government Act 1992 s 17 (as amended) (see para 66 ante), the functions of district councils in relation to the county council's area (Local Government Finance Act 1988 s 91(1)(aa) (added by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 7);
   (3) the Greater London Authority (Local Government Finance Act 1988 s 91(1)(ab)) (added by the Greater London Authority Act 1999 s 106(1), (2));
   (4) a London borough council (Local Government Finance Act 1988 s 91(1)(b)); and
   (5) the Council of the Isles of Scilly (s 91(1)(c)).

   Authorities established under the Local Government Act 1985 Pt IV (ss 23–42) (as amended) (see para 53 et seq ante), the London Fire and Emergency Planning Authority and waste disposal authorities are also required to keep a general fund: see the Local Government Finance Act 1988 s 72(5) (added by the Greater London Authority Act 1999 s 328(8), Sch 29 Pt I para 40); the Local Government Act 1985 s 72(1); and the Waste Regulation and Disposal (Authorities) Order 1985, SI 1985/1884, regs 1, 9, Sch 1. As to areas and authorities in England see para 25 et seq ate; and as to areas and authorities in Wales see para 41 et seq ante. As to the Council of the Isles of Scilly see para 40 ante. As to the London Fire and Emergency Planning Authority see FIRE SERVICES vol 18(2) (Reissue) para 17; LONDON GOVERNMENT.

2 Ie the Local Government Finance Act 1988 Pt VI (ss 89–99) (as amended): s 91(2).

3 Ibid s 91(3) (amended by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 7(2); and the Greater London Authority Act 1999 s 106(1), (3)).

   After 31 March 1990 no district council or London borough council is required to keep a general rate fund; and the assets held in the general rate fund of such an authority immediately before 1 April 1990 (other than assets forming part of a trust fund) must be transferred to its general fund on that date: Local Government Finance Act 1988 s 91(6). After 31 March 1990 the Council of the Isles of Scilly is not required to keep any fund known as its general fund and required (apart from this provision) to be kept under any order made under the Local Government Act 1972 s 265 (as amended) (see para 40 ante); and the assets held in that fund immediately before 1 April 1990 (other than assets forming part of a trust fund) must be transferred on that date to the council's general fund established under the Local Government Finance Act 1988 s 91 (as amended): s 91(7).

4 Ie under the Local Government Act 1992 s 17 (as amended): see para 66 ante.

5 'Structural change' and 'boundary change' must be construed in accordance with the Local Government Act 1992 s 14 (as amended) (see para 63 ante): Local Government Finance Act 1988 s 89(6) (added by the Local Government Changes for England (Finance) Regulations 1994, SI 1994/2825, reg 6).

6 Local Government Finance Act 1988 s 91(3A) (added by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 7(3)).

7 Local Government Finance Act 1988 s 91(3B)(a) (s 91(3B) added by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 7(3)).

8 Local Government Finance Act 1988 s 91(3B)(b) (as added: see note 7 supra).

9 Ibid s 91(3B) (as added: see note 7 supra).

10 Ibid s 91(3C) (added by the Greater London Authority Act 1999 s 106(1), (4)). At the date at which this volume states the law no such regulations had been made.

11 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

12 Local Government Finance Act 1988 s 92(2)(a).

13 Ibid s 92(2)(b). At the date at which this volume states the law no such regulations had been made.

14 Ibid s 92(3).

15 Ie under ibid s 91(6), s 91(7) or s 91(8): see the text and note 3 supra; and para 550 post.

16 Ibid s 92(4) (amended by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 8).

546. Receipts and payments into general funds. Any sum received by a relevant authority[1] on or after the date on which it is required[2] to establish its general fund[3] must be paid into that fund; but this does not apply to a sum which is to be paid into its collection fund[4] or a trust fund[5]. Any payment to be made by a relevant authority on or after the date on which it is required to establish its general fund must be met from that fund; but this does not apply to a payment which is to be met from its collection fund or a trust fund[6].

Authorities established under Part IV of the Local Government Act 1985[7] are required to carry all receipts into their general fund and to pay all liabilities falling to be discharged by the authority out of the general fund[8].

1 As to the meaning of 'relevant authority' see para 545 note 1 ante.

2 Ie by the Local Government Finance Act 1988 s 91 (as amended): see para 545 ante.

3 As to general funds see para 545 ante.

4 As to collection funds see para 547 post.

5 Local Government Finance Act 1988 s 91(4) (amended by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 7(4)). Local authorities stand in a fiduciary position in respect of those who contribute to the funds of such authorities: *Bromley London Borough Council v GLC* [1983] 1 AC 768, [1982] 1 All ER 129, HL.

6 Local Government Finance Act 1988 s 91(5) (amended by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 7(5)).

7 Ie the Local Government Act 1985 Pt IV (ss 23–42) (as amended): see para 53 et seq ante. As to the requirement for authorities established under Pt IV (as amended) to keep a general fund see para 545 ante.

8 Ibid s 72(1).

547. Establishment and maintenance of collection funds. Every billing authority[1] is required to establish, and then maintain, a fund (called the 'collection fund') in accordance with the provisions Part VI of the Local Government Finance Act 1988[2]. The collection fund had to be established on 1 April 1990[3]. In the case of a district council subsequently established for an area by an order[4], the collection fund must be established on the date on which by virtue of the order the structural or boundary change[5] affecting the area comes into force[6]. In the case of:

(1) a county council which is established by such an order, to which the functions of district councils in relation to the county council's area are transferred by or in consequence of the order[7]; or

(2) an existing county council, to which the functions of district councils in relation to the county council's area are transferred by or in consequence of such an order[8],

the collection fund must be established on the date on which by virtue of the order the structural change concerned comes into force[9].

Any sum paid into an authority's collection fund must be used in the making of payments which are to be met from that fund or of transfers which are to be made from it[10]. If not immediately required for the purpose of making those payments or transfers, the sum must be held, invested or otherwise used in such manner as may be prescribed by regulations made by the Secretary of State[11].

The following must be paid into the collection fund of a billing authority:

(a) sums received by the authority in respect of council tax[12] (but not sums received by way of penalty)[13];

(b) sums received by the authority from any major precepting authority[14] under regulations made under the Local Government Finance Act 1988[15];

(c) sums received by the authority in respect of any non-domestic rate under the Local Government Finance Act 1988[16];

(d) sums received by the authority under certain provisions of the Local Government Finance Act 1988[17]; and

(e) any other sums which the Secretary of State specifies[18] are to be paid into a billing authority's collection fund[19].

The following payments must be met from the collection fund of a billing authority:

(i) payments to be made by the authority in respect of the amount of any precept issued by a major precepting authority under Part I of the Local Government Finance Act 1992[20] (but not payments to be so made in respect of interest on such an amount)[21];

(ii) payments to be made by the authority to any major precepting authority under regulations made under the Local Government Finance Act 1988[22];

(iii) payments to be made by the authority to the Secretary of State under certain provisions of the Local Government Finance Act 1988[23];

(iv) payments to be made by the authority to another person in repaying[24] excess receipts by way of non-domestic rates or of council tax[25]; and

(v) any other payments which are to be made by the authority to another person and which the Secretary of State specifies are to be met from a billing authority's collection fund[26].

1 For the meaning of 'billing authority' see para 532 note 3 ante.

2 Local Government Finance Act 1988 s 89(1) (amended by the Local Government Finance Act 1992 s 104, Sch 10 para 19). As to the Local Government Finance Act 1988 Pt VI (ss 89–99) (as amended) see paras 545–546 ante, 548–549 post. The Local Government Finance Act 1988 Pt VI (as amended) does not apply to a Welsh county council or county borough council (for which provision as to the establishment of a council fund is made by the Local Government (Wales) Act 1994 s 38: see para 551 post): Local Government Finance Act 1988 s 89A (added by the Local Government (Wales) Act 1994 s 38(11), Sch 12 para 2).

3 Local Government Finance Act 1988 s 89(2) (amended by the Local Government Changes for England (Finance) Regulations 1994, SI 1994/ 2825, reg 6(1)).

4 Ie under the Local Government Act 1992 s 17 (as amended): see para 66 ante.

5 As to the meanings of 'structural change' and 'boundary change' see para 545 note 5 ante.

6 Local Government Finance Act 1988 s 89(2A) (added by the Local Government Changes for England (Finance) Regulations 1994, SI 1994/ 2825, reg 6(2)).

7 Local Government Finance Act 1988 s 89(2B)(a) (s 89(2B) added by the Local Government Changes for England (Finance) Regulations 1994, SI 1994/ 2825, reg 6(3)).

8 Local Government Finance Act 1988 s 89(2B)(b) (as added: see note 7 supra).

9 Ibid s 89(2B) (as added: see note 7 supra). The Local Government Act 1972 s 101(1)(b) (delegation) (see para 295 ante) does not apply as regards the functions of an authority in relation to its collection fund: Local Government Finance Act 1988 s 89(3).

10 Ibid s 89(4) (amended by the Local Government and Housing Act 1989 s 139, Sch 5 para 62).

11 Local Government Finance Act 1988 s 89(5) (amended by the Local Government and Housing Act 1989 Sch 5 para 79(3)). In exercise of the power so conferred the Secretary of State has made the following regulations: the Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428 (amended by SI 1994/246; and SI 1995/2910), and the Local Authorities (Funds) (Wales) Regulations 1992, SI 1992/2929 (amended by SI 1994/2964). As to the Secretary of State see para 106 ante. As to the transfer of certain

functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

12 Ie the council tax set by it in accordance with the Local Government Finance Act 1992 s 30: see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 849.

13 Local Government Finance Act 1988 s 90(1)(a) (s 90 substituted by the Local Government Finance Act 1992 Sch 10 para 20).

14 For the meaning of 'major precepting authority' see para 532 note 3 ante.

15 Local Government Finance Act 1988 s 90(1)(b) (as substituted: see note 13 supra). The regulations referred to in the text are regulations made under s 99(3) (as amended): see para 549 post.

16 Ibid s 90(1)(c) (as substituted: see note 13 supra).

17 Ie under ibid s 60, Sch 8 para 5(10) or Sch 8 para 5(14) (as substituted) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 601) or regulations made under Sch 8 para 5(15) (as substituted) or Sch 8 para 6(5) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 601): s 90(1)(d) (as substituted: see note 13 supra).

18 The power to specify includes power to revoke or amend a specification made under the power (ibid s 90(3)(a) (as substituted: see note 13 supra)), and may be exercised differently in relation to different authorities (s 90(3)(b) (as so substituted)).

19 Ibid s 90(1)(e) (as substituted: see note 13 supra).

20 Ie the Local Government Finance Act 1992 Pt I (ss 1–69) (as amended): see RATING AND COUNCIL TAX.

21 Local Government Finance Act 1988 s 90(2)(a) (as substituted: see note 13 supra).

22 Ie regulations made under ibid s 99(3) (see para 549 post): see s 90(2)(b) (as substituted: see note 13 supra).

23 Ie under ibid Sch 8 para 5 (as amended) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 601) or regulations made under Sch 8 para 5(15) (as substituted) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 601): s 90(2)(c) (as substituted: see note 13 supra).

24 Ie under regulations under the Local Government Finance Act 1988 or the Local Government Finance Act 1992 Pt I (as amended).

25 Local Government Finance Act 1988 s 90(2)(d) (as substituted: see note 13 supra).

26 Ibid s 90(2)(e) (as substituted: see note 13 supra).

548. Transfers between general funds and collection funds. A billing authority[1] which has made council tax calculations[2] (originally or by way of substitute) must transfer from its collection fund[3] to its general fund[4] an amount which must be calculated by applying a specified formula[5].

Where the amount so given is a negative amount, the authority must transfer the equivalent positive amount from its general fund to its collection fund[6].

Where in accordance with regulations[7] a billing authority has estimated that there is a surplus in its collection fund for the preceding year, it must transfer from its collection fund to its general fund an amount equal to so much of the surplus as, in accordance with the regulations, the authority calculates to be its share[8]. Where in accordance with regulations[9] a billing authority has estimated that there is a deficit in its collection fund for the preceding year, it must transfer from its general fund to its collection fund an amount equal to so much of the deficit as, in accordance with the regulations, the authority calculates must be borne by it[10].

In relation to each financial year[11] beginning in or after 1993 a billing authority must, in accordance with its schedule of instalments[12]: (1) pay to its relevant precepting authorities[13] from its collection fund or its general fund (as the case may be); (2) transfer from its collection fund to its general fund; and (3) transfer from its general fund to its collection fund, such amounts, if any, as will discharge its liabilities[14] for that year[15].

Where a substitute precept or calculation[16] has been issued or made in relation to a financial year and that substitute precept or calculation has been issued or made on or after the day of the final instalment to be paid or

transferred in accordance with the schedule of instalments in that year, any amounts to be paid or transferred by a billing authority in respect of its liabilities for that year which remain to be discharged immediately after the substitute precept or calculation is issued or made must be paid or transferred as soon as reasonably practicable after the issue of that precept or making of that calculation[17].

In relation to each financial year beginning in or after 1993 a billing authority must transfer from its general fund to its collection fund such amounts as will discharge its liability to transfer anything from its general fund[18] at such times and in such instalments as it determines, provided it discharges any such liability within the financial year to which it relates[19]. Where a billing authority makes a substitute calculation after the end of the financial year to which it relates and becomes liable to transfer an amount[20], any amounts to be transferred by that authority in respect of its liabilities which remain to be discharged immediately after the substitute calculation is made must be transferred as soon as reasonably practicable after the making of that calculation[21].

In relation to each financial year beginning in or after 1994 a billing authority must[22] discharge its liability to pay anything from its collection fund to a relevant major precepting authority in respect of so much of any surplus in that fund as that billing authority calculates[23] to be that major precepting authority's share as regards that year[24]. Any amount so calculated as regards the financial year in question must be paid by a billing authority to a relevant major precepting authority in no more than ten equal instalments during that financial year, provided that the first and final instalments are paid in that year no later than 31 May and 31 March respectively, and there are an equal number of days[25] between each instalment[26].

Any amount paid or transferred by a billing authority in respect of a liability for a financial year[27] must be treated as discharging that liability to the extent of the payment or transfer[28].

Regulations[29] may include provision that: (a) any sum to which they relate must be transferred from an authority's collection fund to its general fund[30]; (b) the sum so transferred must be held, invested or otherwise used in such manner as may be prescribed[31]; (c) a sum equal to the sum transferred must be transferred to the authority's collection fund from its general fund[32].

If the Secretary of State directs it to do so, a billing authority must transfer from its collection fund to its general fund such an amount as is specified in, or calculated in a manner specified in, the direction; and the transfer must be made at such time as is specified in the direction[33]. If the Secretary of State directs it do so, a billing authority must transfer to its collection fund from its general fund such an amount as is specified in, or calculated in a manner specified in, the direction; and the transfer must be made at such time as is specified in the direction[34]. Different directions may be given to different authorities[35].

1 For the meaning of 'billing authority' see para 532 note 3 ante.

2 Ie in accordance with the Local Government Finance Act 1992 ss 32–36 (as amended) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 851 et seq): see the Local Government Finance Act 1988 s 97(1) (s 97 substituted by the Local Government Finance Act 1992 s 104, Sch 10 para 22).

3 As to collection funds see para 547 ante.

4 As to general funds see para 545 ante. For the purposes of the Local Government Finance Act 1988 ss 97, 98, 99, any reference to a billing authority's general fund must be construed in relation to the Common Council of the City of London as a reference to the City fund: s 97(5) (as substituted: see note 2 supra). For the meaning of 'City fund' see para 552 post.

5 Ibid s 97(1) (as substituted: see note 2 supra).

6 Ibid s 97(2) (as substituted: see note 2 supra).

7 Ie under ibid s 99(3): see para 549 post. As to the regulations that have been made see para 549 note 2 post.

8 Ibid s 97(3) (as substituted: see note 2 supra).

9 Ie under ibid s 99(3): see para 549 post.

10 Ibid s 97(4) (as substituted: see note 2 supra).

11 For the meaning of 'financial year' see para 531 note 3 ante.

12 'Schedule of instalments' means a schedule determined by a billing authority, in accordance with the Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, regs 4, 6, with respect to the times for and the number and amounts of payments or transfers from its collection fund or its general fund in respect of its liabilities: reg 2(1). Any reference in reg 3 to an authority's schedule of instalments is a reference to the schedule of instalments determined by the authority in accordance with reg 4, or where the authority has amended its schedule in accordance with reg 6, to its schedule of instalments as it currently has effect: reg 3(11).

13 'Relevant precepting authority' in relation to a billing authority means each relevant major precepting authority and each relevant local precepting authority: ibid reg 2(1). 'Relevant major precepting authority' in relation to a billing authority means any major precepting authority having power to issue a precept to that billing authority but the Greater London Authority is, and the Secretary of State is not, a relevant major precepting authority for the purposes of regs 3(6), (7), (8), 12, Sch 2 para 6 in respect of the period beginning on 12 January 2000 and ending with 2 July 2000, notwithstanding the transitional adaptation of the Local Government Finance Act 1992 s 39(1) (as amended): Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 2(1) (definition amended by SI 1999/3459). As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante. 'Relevant local precepting authority' in relation to a billing authority means any local precepting authority having power to issue a precept to that billing authority: Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 2(1).

14 Any reference in the Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428 (however framed) to liabilities in relation to a billing authority is a reference to the liability of a billing authority to:

(1) pay anything from its collection fund in respect of any precept issued by a relevant major precepting authority under the Local Government Finance Act 1992 Pt I (ss 1–69) (as amended), after taking into account any amount credited by that major precepting authority under s 42(4) (as amended) (see para 529 ante) (Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 2(2)(a));

(2) pay anything from its collection fund in respect of so much of any surplus in that fund as, in accordance with reg 11, that billing authority calculates to be a relevant major precepting authority's share (reg 2(2)(b));

(3) pay anything from its general fund in respect of any precept issued by a relevant local precepting authority under the Local Government Finance Act 1992 Pt I (as amended), after taking into account any amount credited by that local precepting authority under s 42(4) (as amended) (see paras 529 ante) (Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 2(2)(c));

(4) transfer anything from its collection fund or its general fund under the Local Government Finance Act 1988 s 97(1) or s 97(2) (as substituted) (as the case may be) (Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 2(2)(d)); and

(5) transfer anything from its collection fund or its general fund under the Local Government Finance Act 1988 s 97(3) or s 97(4) (as substituted) (as the case may be) in respect of so much of any surplus or deficit in its collection fund as, in accordance with the Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 11, that billing authority calculates to be its share or calculates must be borne by it (reg 2(2)(e)).

15 Ibid reg 3(1). The requirement in reg 3(1) to make payments or transfers in accordance with a schedule of instalments does not apply where any of the provisions in reg 3(3)–(8) (as amended) apply: reg 3(2).
16 Any reference to the making of a substitute calculation is a reference to the making of a substitute calculation by a billing authority in accordance with the Local Government Finance Act 1992 s 32(4) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 851): Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 2(3).
17 Ibid reg 3(3).
18 Ie under the Local Government Finance Act 1988 s 97(2) (as substituted): see note 6 supra.
19 Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 3(4).
20 Ie under the Local Government Finance Act 1988 s 97(2) (as substituted): see note 6 supra.
21 Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 3(5).
22 Ie in accordance with ibid reg 3(7), (8) (as amended): see reg 3(6).
23 Ie in accordance with ibid reg 11: see reg 3(6).
24 Ibid reg 3(6).
25 For the purposes of the computation of days a day which is a Saturday, Sunday or bank holiday must be excluded: ibid reg 3(8) (amended by SI 1999/3459).
26 Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 3(7) (amended by SI 1999/3459). Any amount so calculated by an authority (ie in accordance with the Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, Sch 2 para 6(5), (6), (7)) must be paid by a billing authority to the Greater London Authority in no more than eight instalments during the financial year beginning on 1 April 2000, provided that the first and final instalments are paid in that year no later than 6 July and 31 March respectively, and there are an equal number of days between each instalment: reg 3(7A) (added by SI 1999/3459). For the purposes of the computation of days a day which is a Saturday, Sunday or bank holiday must be excluded: Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 3(8) (as amended: see note 25 supra).
27 Ie whether or not paid or transferred in accordance with a schedule of instalments or in accordance with any of the provisions in ibid reg 3(3)–(8) (as amended): reg 3(9).
28 Ibid reg 3(9). For the purposes of reg 3(9), any amount paid or transferred which was treated in accordance with that paragraph as discharging a billing authority's liability, but which was subsequently repaid or credited by the relevant precepting authority concerned under the Local Government Finance Act 1992 s 42(2), or transferred under the Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428, reg 9, must, to the extent of the amount repaid or credited or transferred under reg 9, cease to be treated as discharging that liability: reg 3(10).
29 Ie under the Local Government Finance Act 1988 s 89(5) (see para 547 ante): see s 98(3) (amended by the Local Government Finance Act 1992 ss 104, 117(2), Sch 10 para 23(1), Sch 14).
30 Local Government Finance Act 1988 s 98(3)(a) (as amended: see note 29 supra).
31 Ibid s 98(3)(b).
32 Ibid s 98(3)(c) (as amended: see note 29 supra).
33 Ibid s 98(4) (amended by the Local Government Finance Act 1992 Sch 10 para 23, Sch 14).
34 Local Government Finance Act 1988 s 98(5) (amended by the Local Government Finance Act 1992 Sch 10 para 23, Sch 14).
35 Local Government Finance Act 1988 s 98(6) (amended by the Local Government Finance Act 1992 Sch 10 para 23, Sch 14).

549. Power to make regulations in relation to funds. The Secretary of State[1] may make regulations about the discharge of the following liabilities of a billing authority[2]:

(1) the liability to pay anything from its collection fund[3] or its general fund[4] in respect of any precept issued by a major or local precepting authority[5];
(2) the liability to transfer anything from its collection fund[6]; and
(3) the liability to transfer anything from its general fund[7].

The regulations may include provision:

(a) that anything falling to be paid or transferred must be paid or transferred within a prescribed period[8];
(b) that anything falling to be paid or transferred must be paid or

transferred in instalments of such amounts, and at such times, as are determined by the billing authority in accordance with prescribed rules[9];

(c) that the billing authority must inform any precepting authorities when instalments will be paid and how they are to be calculated[10];

(d) that if an instalment is not paid to a precepting authority in accordance with the regulations, it is to be entitled to interest on the amount of the instalment[11];

(e) as to the circumstances in which the billing authority is to be treated as having discharged the liabilities mentioned in heads (1) to (3) above[12];

(f) as to the recovery (by deduction or otherwise) of any excess amount paid by the billing authority to any precepting authority in purported discharge of the liability mentioned in head (1) above[13]; and

(g) as to the transfer back of any excess amount transferred by the billing authority in purported discharge of the liability mentioned in head (2) or head (3) above[14].

The Secretary of State may by regulations make provision as regards any financial year[15]:

(i) that a billing authority must estimate at a prescribed time in the preceding financial year and in accordance with prescribed rules whether there is a deficit or surplus in its collection fund for that year and, if so, the amount of the deficit or surplus[16];

(ii) that any surplus or deficit so estimated must in the financial year concerned[17] be shared among, or be borne between, the billing authority and major precepting authorities in accordance with prescribed rules or, in the case of the financial year beginning in 1993, belong solely to, or be borne solely by, the billing authority[18];

(iii) that the billing authority must within a prescribed period inform any major precepting authorities of the effects of any estimates and rules mentioned in heads (i) and (ii) above[19];

(iv) as to the manner in which any payments which fall to be made by a billing authority or a major precepting authority by virtue of any provision included in regulations under head (i) or head (ii) above must be made[20];

(v) as to the period within which, or time or times at which, any such payments or instalments of such payments must be made[21]; and

(vi) as to the recovery (by deduction or otherwise) of any excess amount paid by a major precepting authority or a billing authority in purported discharge of any liability arising by virtue of any provision included in regulations under head (i) or head (ii) above[22].

The Secretary of State may make regulations providing that sums standing to the credit of a billing authority's collection fund at any time in a financial year must not exceed a total to be calculated in such manner as may be prescribed[23].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

2 Local Government Finance Act 1988 s 99(1) (s 99 substituted by the Local Government Finance Act 1992 s 104, Sch 10 para 24). For the meaning of 'billing authority' see

para 532 note 3 ante. As to the regulations that have been made under the Local Government Finance Act 1988 s 99 (as substituted) see the Local Authorities (Funds) (England) Regulations 1992, SI 1992/2428 (amended by SI 1994/246; SI 1995/2910; SI 1998/1129; SI 1999/3436; SI 1999/3459); the Local Authorities (Funds) (Wales) Regulations 1992, SI 1992/2929 (amended by SI 1994/2964; SI 1995/3150; SI 1998/1129); and the Local Authorities (Alteration of Requisite Calculations and Funds) Regulations 1994, SI 1994/246.

3 As to collection funds see para 547 ante.

4 As to general funds see para 545 ante.

5 Ie under the Local Government Finance Act 1992 Pt I (ss 1–69) (as amended): see the Local Government Finance Act 1988 s 99(1)(a) (as substituted: see note 2 supra). For the meaning of 'major precepting authority' see para 532 note 3 ante.

6 Ie under ibid s 97(1) or s 97(3) (as amended) (see para 548 ante): s 99(1)(b) (as substituted: see note 2 supra). The Secretary of State may make regulations requiring transfers between funds, or adjustments or assumptions, to be made to take account of any substitute calculation under the Local Government Finance Act 1992 s 32(4) (see RATING AND COUNCIL TAX vol 39(1) (Reissue) para 851): Local Government Finance Act 1988 s 99(4) (as so substituted).

7 Ie under ibid s 97(2) or s 97(4) (as amended) (see para 548 ante): s 99(1)(c) (as substituted: see note 2 supra).

8 Ibid s 99(2)(a) (as substituted: see note 2 supra).

9 Ibid s 99(2)(b) (as substituted: see note 2 supra).

10 Ibid s 99(2)(c) (as substituted: see note 2 supra).

11 Ibid s 99(2)(d) (as substituted: see note 2 supra).

12 Ibid s 99(2)(e) (as substituted: see note 2 supra).

13 Ibid s 99(2)(f) (as substituted: see note 2 supra).

14 Ibid s 99(2)(g) (as substituted: see note 2 supra).

15 For the meaning of 'financial year' see para 531 note 3 ante.

16 Local Government Finance Act 1988 s 99(3)(a) (as substituted: see note 2 supra).

17 For the meaning of 'financial year concerned' see para 532 ante.

18 Local Government Finance Act 1988 s 99(3)(b) (as substituted: see note 2 supra).

19 Ibid s 99(3)(c) (as substituted: see note 2 supra).

20 Ibid s 99(3)(d) (as substituted: see note 2 supra).

21 Ibid s 99(3)(e) (as substituted: see note 2 supra).

22 Ibid s 99(3)(f) (as substituted: see note 2 supra).

23 Ibid s 99(5) (as substituted: see note 2 supra). Regulations under s 99(5) (as substituted) in their application to a particular financial year (including regulations amending others) will not be effective unless they come into force before 1 January in the preceding financial year; but this does not affect regulations which merely revoke others: s 99(6) (as so substituted).

(ii) County Funds

550. County funds. The council of each county is required to keep a fund known as the 'county fund'[1]. All receipts of a county council must be carried to the county fund, and all liabilities falling to be discharged by that council must be discharged out of that fund[2]. Accounts must be kept of receipts carried to, and payments made out of the county fund[3].

Any account kept in respect of general expenses only of a principal area must be called the 'general account' of that area and any account kept in respect of any class of special expenses only of any such area must be called a 'special account' of that area[4].

Where a county council becomes a billing authority due to local government reorganisation, the assets held in the county fund of a county council[5] immediately before the reorganisation date[6] (other than assets forming part of a trust fund) must be transferred on that date to its general fund[7].

1 Local Government Act 1972 s 148(2) (amended by the Local Government Act 1985 s 102, Sch 17). This provision does not apply to the council for a county for any financial year

for which that council is, by virtue of the Local Government Act 1992 s 18(1) (see para 66 ante), a billing authority for that year for the purposes of Pt I (ss 1–69) (as amended): Local Government Act 1972 s 148(5A) (added by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 4). For the meaning of 'billing authority' see para 532 note 3 ante.

2 Local Government Act 1972 s 148(4) (substituted by the Local Government Finance (Repeals and Consequential Amendments) Order 1991, SI 1991/1730, art 2(2), Sch 2). This provision does not apply to the council for a county for any financial year for which that council is, by virtue of the Local Government Act 1992 s 18(1) (see para 66 ante), a billing authority for that year for the purposes of Pt I (as amended): Local Government Act 1972 s 148(5A) (as added: see note 1 supra).

3 Ibid s 148(5)(a) (substituted by the Local Government Finance (Repeals and Consequential Amendments) Order 1991, SI 1991/1730, art 2(2), Sch 2). Accounts must also be kept of receipts carried to, and payments made out of the collection fund and the general fund established under the Local Government Finance Act 1988 s 89 (as amended) (see para 547 ante) and s 91 (as amended) (see para 545 ante), in the case of a district or London borough: Local Government Act 1972 s 148(5)(b) (substituted by the Local Government Finance (Repeals and Consequential Amendments) Order 1991, SI 1991/1730, art 2(2), Sch 2). As to collection funds see para 547 ante; and as to general funds see para 545 ante.

4 Local Government Act 1972 s 148(5). For any financial year for which the council for a county is, by virtue of the Local Government Act 1992 s 18(1) (see para 66 ante), a billing authority for that year for the purposes of Pt I (as amended), the Local Government Act 1972 s 148(5)(b) (as substituted) and not s 148(5)(a) (as substituted) will apply in the case of the county: s 148(5B) (added by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 4).

The Local Government Act 1972 s 148 (as amended) does not apply in relation to a Welsh county council or county borough council: Local Government Act 1972 s 148(6) (added by the Local Government (Wales) Act 1994 s 38(11), Sch 12 para 1).

5 Ie such as is referred to in the Local Government Finance Act 1988 s 91(3B)(b) (as amended): see para 545 ante.

6 For the meaning of 'reorganisation date' see para 545 ante.

7 See the Local Government Finance Act 1988 s 91(8) (added by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 7(6)). See further para 545 ante.

(iii) Funds of Principal Councils in Wales

551. Funds of principal councils in Wales. Each principal council[1] is required to establish, and then maintain, a fund to be known as its 'council fund'[2]. Any sums received by a principal council must be paid into its council fund[3]. All payments by a principal council must be made out of its council fund[4]. These provisions do not apply in relation to any sums to be paid into, or payments to be made out of, a trust fund[5].

Each principal council must keep accounts of sums paid into, and of payments made out of, its council fund[6]. Any account kept only in respect of the general expenses of a principal council is to be known as its 'general account' and any account kept only in respect of any class of its special expenses must be known as a 'special account'[7].

The Secretary of State[8] may make regulations:

(1) requiring assets of a prescribed description which fall within a council fund to be held in a separate fund within the council fund[9];

(2) requiring any fund (other than a trust fund) of a prescribed description which is established by a principal council to be maintained as a separate fund within its council fund[10].

The regulations may, in particular, include provision:

(a) that anything falling to be paid must be paid within a prescribed

period[11] and in instalments of such amounts, and at such times, as are determined by the billing authority[12] in accordance with prescribed rules[13];

(b) that the billing authority must inform any precepting authorities[14] when instalments will be paid and how they are to be calculated[15];

(c) that if an instalment is not paid to a precepting authority in accordance with the regulations, it is to be entitled to interest on the amount of the instalment[16];

(d) as to the circumstances in which the billing authority is to be treated as having discharged the liability[17];

(e) as to the recovery (by deduction or otherwise) of any excess amount paid by the billing authority to any precepting authority in purported discharge of the liability[18].

In relation to each financial year beginning in or after 1996 a billing authority must in accordance with its schedule of instalments[19] pay to its relevant precepting authorities[20] such amounts, if any, as will discharge its liabilities[21] for that financial year[22]. The requirement to make payments in accordance with a schedule of instalments does not apply where a substitute precept has been issued in relation to a financial year and that substitute precept has been issued on or after the day of the final instalment to be paid in accordance with the schedule of instalments for that financial year[23]. In such a case, any amounts to be paid by a billing authority in respect of its liability for that financial year which remain to be discharged immediately after the substitute precept is issued must be paid as soon as is reasonably practicable after the issue of that precept[24].

1 As to areas and authorities in Wales see para 41 et seq ante.
2 Local Government (Wales) Act 1994 s 38(1). The Local Government Act 1972 s 101(1)(b) (see para 295 ante) (delegation) does not apply as regards the functions of a new principal council in relation to its council fund: Local Government (Wales) Act 1994 s 38(5).
3 Ibid s 38(2).
4 Ibid s 38(3).
5 Ibid s 38(4).
6 Ibid s 38(6).
7 Ibid s 38(7).
8 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
9 Local Government (Wales) Act 1994 s 38(8)(a).
10 Ibid s 38(8)(b). The Secretary of State may by regulations make provision with respect to the liability of new principal councils to make payments from their council funds in respect of precepts issued under the Local Government Finance Act 1992 Pt I Ch IV (ss 39–52) (as amended) (see para 524 et seq ante): Local Government (Wales) Act 1994 s 38(9). The Local Authorities (Precepts) (Wales) Regulations 1995, SI 1995/2562 (as amended), have been made under the Local Government (Wales) Act 1994 s 38(9): see the text and notes 19–24 infra.
11 Ibid s 38(10)(a)(i).
12 For the meaning of 'billing authority' see para 532 note 3 ante.
13 Local Government (Wales) Act 1994 s 38(10)(a)(ii).
14 For the meaning of 'precepting authority' see para 529 note 1 ante.
15 Local Government (Wales) Act 1994 s 38(10)(b).
16 Ibid s 38(10)(c).
17 Ie mentioned in ibid s 38(9) (see note 10 supra): s 38(10)(d).
18 Ie mentioned in ibid s 38(9) (see note 10 supra): s 38(10)(e).
19 'Schedule of instalments' means: (1) a schedule determined, or to be determined, by a billing authority in accordance with the Local Authorities (Precepts) (Wales) Regulations 1995, SI 1995/2562, reg 4 and, where it applies, reg 6, with respect to the times for and the number and amounts of payments from its council fund in respect of its

liabilities; and (2) in relation to a financial year for which such a schedule has been so determined, means the schedule which currently has effect for that financial year: reg 2(1).

20 'Relevant precepting authority', in relation to a billing authority, means the relevant major precepting authority and each relevant local precepting authority: ibid reg 2(1). 'Relevant major precepting authority', in relation to a billing authority, means the police authority established under the Police Act 1964 s 3 (now repealed), having power to issue a precept to that billing authority: Local Authorities (Precepts) (Wales) Regulations 1995, SI 1995/2562, reg 2(1). 'Relevant local precepting authority', in relation to a billing authority, means any community council having power to issue a precept to that billing authority: reg 2(1).

21 Any reference in the Local Authorities (Precepts) (Wales) Regulations 1995, SI 1995/2562 (however framed), to liability in relation to a billing authority is a reference to the liability of a billing authority to pay anything from its council fund in respect of any precept issued by a relevant precepting authority under the Local Government Finance Act 1992 Pt I Ch IV (ss 39–52) (as amended) (see para 524 et seq ante), after taking into account any amount credited against that liability by that relevant precepting authority under s 42(4): Local Authorities (Precepts) (Wales) Regulations 1995, SI 1995/2562, reg 2(2).

22 Ibid reg 3(1).

23 Ibid reg 3(2), (3).

24 Ibid reg 3(3). Any amount paid by a billing authority in respect of a liability for a financial year, whether or not paid in accordance with a schedule of instalments or in accordance with the provisions in reg 3(3), must be treated as discharging that liability to the extent of the payment: reg 3(4). For the purposes of reg 3(4), any amount paid which was treated as discharging a billing authority's liability, but was subsequently repaid or credited by the relevant precepting authority concerned under the Local Government Finance Act 1992 s 42(4), must, to the extent of the amount repaid or credited, cease to be treated as discharging that liability: Local Authorities (Precepts) (Wales) Regulations 1995, SI 1995/2562, reg 3(5).

(iv) The City Fund

552. The City fund. The Common Council of the City of London[1] is required to establish, and then maintain, a fund (called 'the City fund') in accordance with Part VI of the Local Government Finance Act 1988[2]. The City fund had to be established on 1 April 1990[3]. Any sum received by the Common Council of the City of London after 31 March 1990 must be paid into the City fund if it is not a sum which is to be paid into its collection fund[4] or a trust fund and:

(1) it is received in respect of the general rate, the poor rate or the St Botolph tithe rate[5]; or

(2) it would have fallen to be credited in aid of any of those rates had the Local Government Finance Act 1988 not been passed[6].

Any payment to be made by the Common Council of the City of London after 31 March 1990 must be met from the City fund if it is not a payment which is to be met from its collection fund or a trust fund and if, had the Local Government Finance Act 1988 not been passed, it would have fallen to be met out of:

(a) the general rate, the poor rate or the St Botolph tithe rate[7]; or

(b) sums which, had the Local Government Finance Act 1988 not been passed, would have fallen to be credited in aid of any of those rates[8].

No sum may be paid into, and no payment may be met from, the City fund except in accordance with these provisions[9].

The assets of the Common Council of the City of London subsisting immediately before 1 April 1990 had to be transferred to the City fund on

that date if they were assets subsisting in respect of the general rate, the poor rate or the St Botolph tithe rate[10], or representing sums credited in aid of any of those rates[11].

The Secretary of State[12] may make regulations:

(i) about the relationship of the City fund to other funds of the Common Council of the City of London[13];

(ii) providing for assets falling within the City fund to be held in separate funds within the City fund[14];

(iii) prohibiting the Common Council of the City of London from establishing funds[15].

The regulations may provide that any fund established by the Common Council of the City of London on or after 1 April 1990, and falling within a prescribed description, is to be maintained as a separate fund falling within the City fund[16]. The regulations may provide that such assets as are transferred to the City fund[17] and fall within a prescribed description must be held in separate funds falling within the City fund; and the number and composition of the separate funds must be such as are prescribed[18].

The regulations may provide that the Common Council of the City of London is not to establish or maintain on or after 1 April 1990 a fund into which both the following must or may be paid, namely, sums which must be paid into the City fund[19], and other sums[20]. Similarly, the regulations may provide that the Common Council of the City of London may not establish or maintain on or after 1 April 1990 a fund from which both the following must or may be met, namely, payments which must be met from the City fund[21], and other payments[22].

1 As to local government in London see para 39 ante; and LONDON GOVERNMENT.
2 Ie the Local Government Finance Act 1988 Pt VI (ss 89–99) (as amended): see s 93(1).
3 Ibid s 93(2).
4 As to collection funds see para 547 ante.
5 Local Government Finance Act 1988 s 93(3)(a).
6 Ibid s 93(3)(b).
7 Ibid s 93(4)(a).
8 Ibid s 93(4)(b).
9 Ibid s 93(5).
10 Ibid s 93(6)(a).
11 Ibid s 93(6)(b).
12 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
13 Local Government Finance Act 1988 s 94(1)(a). At the date at which this volume states the law no such regulations had been made under s 94.
14 Ibid s 94(1)(b). See note 13 supra.
15 Ibid s 94(1)(c). See note 13 supra.
16 Ibid s 94(2).
17 Ie under ibid s 93(6): see the text and notes 10–11 supra.
18 Ibid s 94(3).
19 Ie under ibid s 93(3): see the text and notes 4–6 supra.
20 Ibid s 94(4).
21 Ie under ibid s 93(4): see the text and notes 7–8 supra.
22 Ibid s 94(5).

(v) Police Funds

553. Police funds. Each police authority[1] is required to keep a fund known as the 'police fund'[2]. Subject to any regulations under the Police Pensions Act 1976[3], all receipts of the police authority must be paid into the

police fund and all expenditure of the authority must be paid out of that fund[4]. Accounts must be kept by each police authority of payments made into or out of the police fund[5].

These provisions also apply to the Metropolitan Police Authority[6].

1 Ie established under the Police Act 1996 s 3: see POLICE vol 36(1) (Reissue) para 316 et seq.
2 Ibid s 14(1). As to the police fund see POLICE vol 36(1) (Reissue) para 329.
3 Ie made under the Police Pensions Act 1976 s 1 (as amended): see POLICE vol 36(1) (Reissue) para 503.
4 Police Act 1996 s 14(2).
5 Ibid s 14(3).
6 See ibid s 14(4) (added by the Greater London Authority Act 1999 s 325, Sch 27 para 73). As to the Metropolitan Police Authority see POLICE vol 36(1) (Reissue) para 314.

(vi) Funds of Parish and Community Councils

554. **In general.** Certain provisions relating to funds[1] have been largely repealed[2] but it seems that they continue to have effect in relation to parish and community councils[3].

1 Ie the Local Government Act 1972 s 172, Sch 13 Pt I (paras 1–22): see paras 555–557 post.
2 See the Local Government and Housing Act 1989 s 194, Sch 12 Pt I.
3 Prior to the repeal, 'local authority' was defined for these purposes as a county council, the Greater London Council, a district council, the Common Council of the City of London, a London borough council, a parish or community council, and a combined police authority which is a body corporate: Local Government Act 1972 ss 172, 270(1), Sch 13 para 22(2) (largely repealed by the Local Government and Housing Act 1989 s 194, Sch 12 Pt I). The repeal of the Local Government Act 1972 Sch 13 Pt I has no effect in relation to any body which is not mentioned in the Local Government and Housing Act 1989 s 39(1)(a)–(j) (as amended) and has not been prescribed by regulations under s 39(3) (as amended): see the Local Government and Housing Act 1989 (Commencement No 5 and Transitional Provisions) Order 1990, SI 1990/431, reg 4, Sch 1 para 1. The bodies mentioned in the Local Government and Housing Act 1989 s 39(1)(a)–(j) (as amended) are: a county council; a county borough council; a district council; the Greater London Authority; a functional body within the meaning of the Greater London Authority Act 1999 (see LONDON GOVERNMENT); a London borough council; the Common Council of the City of London in its capacity as a local authority, a police authority or a port health authority; the Council of the Isles of Scilly; the Greater London Magistrates' Courts Authority; an authority established under the Local Government Act 1985 s 10 (as amended); a joint authority established by Pt IV (ss 23–42) (as amended) (see para 53 et seq ante); a joint planning board constituted for an area in Wales outside a national park by an order under the Town and Country Planning Act 1990 s 2(1B) (as added) (see TOWN AND COUNTRY PLANNING); the Broads Authority; a national park authority; a fire authority constituted by a combination scheme made under the Fire Services Act 1947 s 6 (as amended) (see FIRE SERVICES vol 18(2) (Reissue) para 24) in consequence of an order made under the Local Government Act 1992 Pt II (ss 12–27) (as amended) (see para 62 et seq ante) or in consequence of the provisions of the Local Government (Wales) Act 1994; and a police authority established under the Police Act 1996 s 3 (see POLICE vol 36(1) (Reissue) para 316 et seq). See further para 559 post. Regulations under the Local Government and Housing Act 1989 s 39(3) (as amended) being local in nature are not noted in this work.

The effect of these provisions appears to be that the Local Government Act 1972 Sch 13 Pt I continues to have effect in relation to parish and community councils. As to parish councils see para 30 et seq ante; and as to community councils see para 46 et seq ante. As to areas and authorities in England see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante.

555. **Loan funds.** A parish or community council, in accordance with a scheme made by it, may establish and operate a loans fund[1] for defraying

any expenditure which the authority is authorised by or under any enactment to meet out of money borrowed by it and for the repayment or redemption of debt[2].

1 A loans fund represents a pool of capital money from which pool advances can be made in respect of the capital expenditure of the various services of the council. For a description of loans pooling see the *Report of the Committee of Inquiry into Local Government Finance—Chairman Sir Frank Layfield* QC (Cmnd 6453) (1976) paras 45–47.

2 Local Government Act 1972 s 172, Sch 13 para 15(1). As to the repeal of Sch 13 Pt I (paras 1–22) for certain purposes see para 554 ante. Such a scheme may be varied or revoked by a subsequent scheme: Sch 13 para 15(2). There are no specific procedural requirements for such schemes.

556. Capital and other funds. A parish or community council may establish such funds as it considers appropriate[1] for the purpose of meeting any expenditure of the authority in connection with its functions[2], and may make such payments as it thinks fit into a fund so established[3]. Until applied for the purposes of the fund, or in a manner authorised by or under any enactment, the money in such funds must be invested in securities in which superannuation funds may for the time being be invested[4].

Funds established under this power for purposes other than those of certain undertakings[5] of the authority may not be used to meet, directly or indirectly, any expenditure for the purpose of such an undertaking[6]. An insurance fund established only to provide money to make good loss or damage suffered by a local authority from an insurable risk may not be used for any further purpose except that of paying premiums on a policy of insurance against the risk[7]. While a local authority maintains an insurance fund in respect of a risk any obligation imposed on the authority by statute or otherwise to insure against the risk is deemed to be satisfied unless the statute or a relevant agreement provides otherwise[8].

1 This general discretion replaces the former legislation in local Acts, and in the Local Government (Miscellaneous Provisions) Act 1953 ss 1–3 (repealed), which provided for specifically named funds such as capital funds, renewal and repairs funds, insurance funds, art funds and others, with specific limitations on amounts paid in and expended from the fund.

2 Local Government Act 1972 s 172, Sch 13 para 16(1)(a) (Sch 13 para 16 substituted by the Local Government (Miscellaneous Provisions) Act 1976 s 28). As to the repeal of the Local Government Act 1972 Sch 13 Pt I (paras 1–22) for certain purposes see para 554 ante. The general power to establish funds may not, however, be used to establish a loans fund (see para 555 ante), a superannuation fund or a fund which an authority is required to maintain by virtue of an enactment: Sch 13 para 16(1) (as so substituted). Such funds may therefore be established only in accordance with specific provisions to that effect.

3 Ibid Sch 13 para 16(1)(b) (as substituted: see note 2 supra). Money received from the disposal of any property the income from which or the expenditure on which is included in a local authority's housing revenue account may not without the consent of the Secretary of State be paid into a fund established under the general power to establish funds: Sch 13 para 18 (substituted by the Local Government (Miscellaneous Provisions) Act 1976 s 28). As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

4 Local Government Act 1972 Sch 13 para 16(2) (as substituted: see note 2 supra).

5 Ie an undertaking which is a transport, airport, district heating, harbour, dock, pier or ferry undertaking or is a market or a civic restaurant: ibid Sch 13 para 17(1) (Sch 13 para 17 substituted by the Local Government (Miscellaneous Provisions) Act 1976 s 28; and amended by the Local Government Act 1985 s 102, Sch 17).

6 Local Government Act 1972 Sch 13 para 17(1) (as substituted: see note 5 supra). However, an insurance fund may be used for insurance purposes in connection with such an undertaking: Sch 13 para 17(1)(a) (as so substituted).

7 Ibid Sch 13 para 17(2) (as substituted: see note 5 supra).
8 Ibid Sch 13 para 17(2) (as substituted: see note 5 supra).

557. Use of funds. Money forming part of, but not for the time being required for the purposes of, a loans fund[1], a superannuation fund or a general fund[2] established by a parish or community council may be used for any purpose for which the authority has a statutory power to borrow[3]. Money so used must be repaid to the lending fund: (1) as and when it is required for the purpose of that fund[4]; (2) if not required to be repaid earlier under head (1) above, within the period within which a loan raised under the statutory power would be repayable, or at such earlier time as the authority may resolve[5]. The repayment must be made out of the revenue fund, or out of money which would have been applicable to the repayment of a loan raised under the statutory power, and must be made by the method by which a loan raised under the statutory power would be repayable[6].

In the accounts of the revenue fund an amount equal to interest at the appropriate rate[7] on the money so used and for the time being not repaid must be credited to the lending fund and debited to the undertaking or purpose for which the money is so used[8].

1 As to loans funds see para 555 ante.
2 As to the general power to establish funds see para 556 ante.
3 Local Government Act 1972 s 172, Sch 13 para 19(1), (5) (Sch 13 para 19(5) substituted by the Local Government (Miscellaneous Provisions) Act 1976 s 28). As to the repeal of the Local Government Act 1972 Sch 13 Pt I (paras 1–22) for certain purposes see para 554 ante. 'Statutory power to borrow' means a power to borrow conferred by or under the Local Government Act 1972 or any other enactment, except the power to borrow by way of temporary loan or overdraft conferred by Sch 13 para 10: Sch 13 para 19(6). The powers conferred by Sch 13 para 19 are in addition to and not in derogation of the powers conferred by or under any other enactment: Sch 13 para 19(7). The statutory power is deemed to be exercised by the use of money under Sch 13 para 19 as fully in all respects as if a loan of the same amount had been raised in exercise of the power: Sch 13 para 19(4).
4 Ibid Sch 13 para 19(2)(a).
5 Ibid Sch 13 para 19(2)(b).
6 Ibid Sch 13 para 19(2)(c).
7 'Interest at the appropriate rate' means interest at such rate as may be determined by the authority to be equal as nearly as may be to the rate of interest which would be payable on a loan raised on mortgage under the statutory power: ibid Sch 13 para 19(6).
8 Ibid Sch 13 para 19(3).

(6) CAPITAL FINANCE

(i) Introduction

558. New regime of capital finance regulation. Part IV of the Local Government and Housing Act 1989[1] established a new system to regulate the capital expenditure and borrowing of certain authorities and bodies. In general it supersedes the regime established by Part VIII of the Local Government, Planning and Land Act 1980[2] and other enactments.

The approach of the regime under the Local Government, Planning and Land Act 1980 was to impose direct limits on capital spending. The approach of the regime under the Local Government and Housing Act 1989 is to impose limits on the sources of capital spending by authorities by regulating the manner in which capital receipts may be used and requiring authorities to provide for credit liabilities. The new regime also regulates the acquisition by authorities of capital assets by means other than borrowing[3].

1 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended).
2 Ie the Local Government, Planning and Land Act 1980 Pt VIII (ss 71–85) (repealed).
3 See paras 579–591 post.

559. Authorities affected. For financial years[1] beginning on or after 1 April 1990, Part IV of the Local Government and Housing Act 1989[2] has effect with respect to the finances of the following local authorities:

(1) a county council[3];
(2) a county borough council[4];
(3) a district council[5];
(4) the Greater London Authority[6];
(5) a functional body[7];
(6) a London borough council[8];
(7) the Common Council of the City of London[9];
(8) the Council of the Isles of Scilly[10];
(9) the Greater London Magistrates' Courts Authority[11];
(10) an authority established under the Local Government Act 1985[12];
(11) a joint authority established by Part IV of the Local Government Act 1985[13];
(12) a joint planning board constituted for an area in Wales outside a national park[14];
(13) the Broads Authority[15];
(14) a national park authority[16];
(15) a fire authority constituted by a combination scheme[17];
(16) a police authority[18];
(17) the Service Authority for the National Crime Squad[19];
(18) any other body prescribed by regulations[20].

1 'Financial year' means the period of 12 months beginning on 1 April: Local Government and Housing Act 1989 s 66(1).
2 Ie ibid Pt IV (ss 39–66) (as amended).
3 Ibid s 39(1)(a). As to areas and authorities in England see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante.
4 Ibid s 39(1)(aa) (added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 88; and amended by the Greater London Authority Act 1999 s 111(1), (3)).
5 Local Government and Housing Act 1989 s 39(1)(b).
6 Ibid s 39(1)(bb) (added by the Greater London Authority Act 1999 s 111(1), (2)).
7 Ie within the meaning of the Greater London Authority Act 1999: Local Government and Housing Act 1989 s 39(1)(bc) (added by the Greater London Authority Act 1999 s 111(1), (2)).
8 Local Government and Housing Act 1989 s 39(1)(c).
9 Ibid s 39(1)(d). The reference to the Common Council of the City of London is a reference to that Council in its capacity as a local authority, a police authority or a port health authority: s 39(2).
10 Ibid s 39(1)(e).
11 Ibid s 39(1)(ea) (added by the Access to Justice Act 1999 s 83(3), Sch 12 paras 4, 5).
12 Ie under the Local Government Act 1985 s 10 (as amended) (waste disposal authorities): Local Government and Housing Act 1989 s 39(1)(f).
13 Ie by the Local Government Act 1985 Pt IV (ss 23–42) (as amended) (see para 545 ante) (fire services, civil defence and transport): Local Government and Housing Act 1989 s 39(1)(g) (amended by the Police and Magistrates' Courts Act 1994 ss 30, 93, Sch 9 Pt I).
14 Ie by an order under the Town and Country Planning Act 1990 s 2(1B) (as added) (see TOWN AND COUNTRY PLANNING): Local Government and Housing Act 1989 s 39(1)(hh) (added by the Environment Act 1995 s 78, Sch 10 para 31(2)).
15 Local Government and Housing Act 1989 s 39(1)(i).
16 Ibid s 39(1)(ia) (added by the Environment Act 1995 s 73).
17 Ie made under the Fire Services Act 1947 s 6 (as amended) (see FIRE SERVICES vol 18(2) (Reissue) para 24) in consequence of an order made under the Local Government

Act 1992 Pt II (ss 12–27) (as amended) (see para 62 et seq ante) or in consequence of the provisions of the Local Government (Wales) Act 1994: Local Government and Housing Act 1989 s 39(1)(ib) (added by the Local Government (Changes for England) (Finance) Regulations 1994, SI 1994/2825, reg 9; and substituted by the Local Government Reorganisation (Wales) (Capital Finance) Order 1996, SI 1996/633, art 2).

18 Ie established under the Police Act 1996 s 3 (as amended) (POLICE vol 36(1) (Reissue) para 316 et seq): Local Government and Housing Act 1989 s 39(1)(j) (amended by the Police Act 1996 s 103, Sch 7 para 1(2)(zd)).

19 Local Government and Housing Act 1989 s 39(1)(ja) (added by the Police Act 1997 s 67).

20 Local Government and Housing Act 1989 s 39(1)(k). The text refers to any other body prescribed by regulations under s 39(3) (as amended).

560. Charging of expenditure to revenue account. All expenditure incurred by a local authority[1], other than excluded expenditure[2], must be charged to a revenue account[3] of the authority and unless, in accordance with proper practices (exclusive of this provision), it is appropriate to charge some or all of any particular item of expenditure to a revenue account for an earlier or a later financial year, the expenditure must be charged to a revenue account of the authority for the year in which it is incurred[4].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante. The reference in the Local Government and Housing Act 1989 s 41(1) to expenditure incurred by a local authority in any financial year includes the following (whether or not giving rise to actual payments):

(1) any amount which does not form part of the authority's capital receipts and which is set aside for the year by the authority as provision to meet credit liabilities, otherwise than by virtue of any of s 63(2)–(4) (see para 577 post) (s 41(3)(a)); and

(2) any other amount which is set aside for the year by the authority as reasonably necessary for the purpose of providing for any liability or loss which is likely or certain to be incurred but is uncertain as to the amount or the date on which it will arise (or both) (s 41(3)(b)),

and the reference in s 41(5) (see note 4 infra) to expenditure incurred by a local authority must be construed in accordance with s 41(3) (s 41(3)). For the meaning of 'financial year' see para 559 note 1 ante. As to capital receipts see paras 605–618 post. For the purposes of Pt IV (ss 39–66) (as amended), a local authority incurs a liability in respect of a payment at the time when it becomes unconditionally liable to make the payment: s 66(2)(a).

2 Ie excluded by ibid s 42: see para 561 post.

3 In relation to a local authority, any reference to a revenue account is a reference to one of the following accounts for a financial year of the authority, namely:

(1) a revenue account which the authority is required to keep by virtue of any enactment (ibid s 41(2)(a));

(2) a revenue account which the authority is required to keep in order to comply with proper practices (s 41(2)(b)); or

(3) any other revenue account which the authority decides to keep in accordance with proper practices (s 41(2)(c)).

The Local Government and Housing Act 1989 s 41(2) has effect not only for the purposes of the Local Government and Housing Act 1989 but also for the purposes of: (a) any enactment passed after or in the same session as the Local Government and Housing Act 1989; and (b) any earlier enactment which is amended by the Local Government and Housing Act 1989 or by any such enactment as is referred to in head (a) supra: s 41(4).

In relation to a local authority, references in Pt IV (as amended) to proper practices are references to those accounting practices (s 66(4)):

(i) which the authority is required to follow by virtue of any enactment (s 66(4)(a)); or

(ii) which, whether by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned (s 66(4)(b)),

but, in the event of any conflict in any respect between the practices falling within head (i) supra and those falling within head (ii) supra, only those falling within head (i) supra are

to be regarded as proper practices (s 66(4)). Section 66(4) has effect not only for the purposes of the Local Government and Housing Act 1989 but also for the purposes of: (A) any enactment passed after or in the same session as the Local Government and Housing Act 1989; and (B) the Local Government Finance Act 1988: Local Government and Housing Act 1989 s 66(5) (amended by the Audit Commission Act 1998 s 54(1), (3), Sch 3 para 18(2), Sch 5)).

4 Local Government and Housing Act 1989 s 41(1). Nothing in s 41 or the following provisions of Pt IV (as amended) permit an authority to charge to a revenue account which it is required to keep by virtue of Pt VI (as amended) or any other enactment any expenditure incurred by a local authority which could not otherwise be so charged: s 41(5).

561. Expenditure not required to be charged to revenue account. Expenditure falling within heads (1) to (9) below is excluded from the obligation[1] to be charged to a revenue account[2] but, if it is consistent with proper practices[3] and the authority so wishes, any such expenditure may be charged to a revenue account of the authority for the financial year[4] in which it is incurred or an earlier or later financial year[5]. The expenditure referred to above is as follows[6]:

(1) expenditure arising from the discharge of any liability[7] of the authority under a credit arrangement[8], other than an arrangement excluded by regulations[9];

(2) expenditure arising from the discharge of any liability of the authority in respect of money borrowed[10] by the authority, other than a liability in respect of interest[11];

(3) expenditure which, in reliance on a credit approval, the authority has determined[12] is not to be chargeable to a revenue account of the authority[13];

(4) expenditure on making approved investments[14];

(5) expenditure consisting of the application or payment of capital receipts[15];

(6) expenditure which is met out of the usable part of capital receipts[16];

(7) expenditure for capital purposes[17] which the authority determines is, or is to be, reimbursed or met out of money provided, or to be provided, by any other person, excluding grants from a Community institution other than contributions from any of the structural funds[18];

(8) expenditure in respect of payments out of a superannuation fund which the authority is required to keep by virtue of the Superannuation Act 1972[19]; and

(9) expenditure in respect of payments out of a trust fund which is held for charitable purposes and of which the authority is a trustee[20].

Where[21] expenditure of any description is excluded from the above obligation[22], it is also to be excluded from any requirement arising under any enactment[23] under which the expenditure is required to be charged to a revenue account or any particular revenue account; but if: (a) an authority decides that expenditure of that description should be charged to a revenue account as mentioned above[24]; and (b) under any such requirement that expenditure (apart from this provision) would have to be charged to a particular revenue account[25], that expenditure may be charged only to that revenue account[26].

1 Ie the obligation in the Local Government and Housing Act 1989 s 41(1): see para 560 ante.

2 For the meaning of 'revenue account' see para 560 note 3 ante.

3 For the meaning of 'proper practices' see para 560 note 3 ante.
4 For the meaning of 'financial year' see para 559 note 1 ante.
5 Local Government and Housing Act 1989 s 42(1).
6 Ibid s 42(2), which is expressed to be subject to s 42(4).
7 For the purposes of ibid Pt IV (ss 39–66) (as amended), a local authority discharges a liability in respect of a payment at the time when it makes the actual payment, whether or not it has at that time become unconditionally liable to do so: s 66(2)(b). For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
8 As to credit arrangements see para 579 et seq post.
9 Local Government and Housing Act 1989 s 42(2)(a). The text refers to exclusion by regulations under Sch 3 Pt III para 11: see para 572 post.
10 For the avoidance of doubt, except as provided by ibid s 44(5) (see para 600 post), any reference in Pt IV (as amended) to borrowing by a local authority does not include a reference to the temporary use by an authority of money forming part of a particular fund of the authority for a purpose other than that of the fund: s 66(7). If, under or by virtue of any enactment, all or any of the liabilities of an authority (in s 66(6) referred to as 'the original authority') in respect of a loan to or borrowing (or money borrowed) by the authority have become liabilities of another local authority (in s 66(6) referred to as 'the current authority') then, in so far as regulations made by the Secretary of State so provide:
   (1) in relation to the current authority, any reference in Pt IV (as amended) to a loan to or borrowing (or money borrowed) by that authority includes a reference to the loan to or borrowing (or money borrowed) by the original authority (s 66(6)(a)); and
   (2) if the original authority is a local authority for the purposes of Pt IV (as amended), any reference to a loan to or borrowing (or money borrowed) by that authority excludes a reference to the loan, borrowing (or money borrowed) in respect of which the liabilities have become those of the current authority (s 66(6)(b)).

   As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
11 Local Government and Housing Act 1989 s 42(2)(b).
12 Ie under ibid s 56(1)(a): see para 564 post.
13 Ibid s 42(2)(c).
14 Ibid s 42(2)(d). 'Approved investments' means investments approved for the purposes of Pt IV (as amended) by regulations made by the Secretary of State: s 66(1)(a). The Local Authorities (Capital Finance, Approved Investments and Contracts) (Amendment) Regulations 2000, SI 2000/1033, and the Local Authorities (Capital Finance and Approved Investments) (Amendment) Regulations 1999, SI 1999/1852, have been made under the Local Government and Housing Act 1989 s 66(1)(a).
15 Ie as mentioned in ibid s 59(7)–(9) (see para 614 post): see s 42(2)(e).
16 Ie in accordance with ibid s 60(2) (see para 610 post): see s 42(2)(f).
17 As to expenditure for capital purposes see para 562 post.
18 Local Government and Housing Act 1989 s 42(2)(g) (amended by the Local Government (Grants from Structural Funds) Regulations 2000, SI 2000/589, reg 2(1), (2)). 'Structural funds' has the same meaning as in EC Council Regulation 1260/1999 (OJ L161, 26.06.99, p 1) laying down general provisions on the Structural Funds, art 2(1): Local Government and Housing Act 1989 s 66(1)(e) (added by the Local Government (Grants from Structural Funds) Regulations 2000, SI 2000/589, reg 2(1), (5)). A determination under the Local Government and Housing Act 1989 s 42(2)(g) (as amended) may not be made later than 30 September in the financial year following that in which the expenditure in question is incurred: s 42(3).
19 Ibid s 42(2)(h).
20 Ibid s 42(2)(i).
21 Ie by virtue of ibid s 42(1): see s 42(5).
22 Ie the obligation in ibid s 41(1): see para 560 ante.
23 Ie including an enactment in ibid Pt VI (ss 74–88) (as amended): see HOUSING vol 22 (Reissue) para 123 et seq.
24 Ie as mentioned in ibid s 42(1): see s 42(5)(a).
25 Ibid s 42(5)(b).
26 Ibid s 42(5).

562. Meaning of capital purposes and liabilities. References in Part IV of the Local Government and Housing Act 1989[1] to expenditure for capital purposes must be construed in accordance with the following provisions[2]. The following expenditure (relating to tangible assets) is expenditure for capital purposes, namely, expenditure on[3]:

(1) the acquisition, reclamation, enhancement[4] or laying out of land, exclusive of roads, buildings and other structures[5];

(2) the acquisition, construction, preparation, enhancement or replacement of roads, buildings and other structures[6]; and

(3) the acquisition, installation or replacement of movable or immovable plant, machinery and apparatus and vehicles and vessels[7].

The following expenditure, in so far as it is not expenditure on approved investments[8], is expenditure for capital purposes, namely, expenditure on: (a) the making of advances, grants or other financial assistance to any person towards expenditure incurred or to be incurred by him on the matters mentioned in heads (1) to (3) above or on the acquisition of investments[9]; and (b) the acquisition of share capital or loan capital in any body corporate[10].

Expenditure incurred by a local authority under a private finance transaction[11], in so far as it is not expenditure for capital purposes by virtue of heads (1) to (3) above, is expenditure for capital purposes[12].

1 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended).
2 Ibid s 40(1).
3 Ibid s 40(2), which is expressed to be subject to s 40(5), (6).
4 For the purposes of ibid s 40(2), 'enhancement', in relation to any asset, means the carrying out of works which are intended: (1) to lengthen substantially the useful life of the asset (s 40(3)(a)); (2) to increase substantially the open market value of the asset (s 40(3)(b)); or (3) to increase substantially the extent to which the asset can or will be used for the purposes of or in connection with the functions of the local authority concerned (s 40(3)(c)), but expenditure on the enhancement of an asset must not be regarded as expenditure for capital purposes unless it should be so regarded in accordance with proper practices (s 40(3)). For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante. For the meaning of 'proper practices' see para 560 note 3 ante.
5 Ibid s 40(2)(a).
6 Ibid s 40(2)(b).
7 Ibid s 40(2)(c).
8 For the meaning of 'approved investments' see para 561 note 14 ante.
9 Local Government and Housing Act 1989 s 40(4)(a).
10 Ibid s 40(4)(b).
11 As to private finance transactions see para 582 post.
12 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 8(2).

563. Information required by Secretary of State. The Secretary of State[1] may serve on a local authority[2] a notice requiring the authority to supply to him such information as is specified in the notice and is required by him:

(1) for the purpose of deciding whether to exercise his powers, and how to perform his functions, under Part IV of the Local Government and Housing Act 1989[3]; or

(2) for the purpose of ascertaining whether an authority has acted, or is likely to act, in accordance with Part IV[4]; or

(3) for the purpose of assisting the formulation of government economic policies[5],

but no information can be required for the purpose specified in head (3) above unless it relates to, or to plans or proposals about, the finances and expenditure of the authority or of any company in which the authority has an interest[6].

If the information specified in such a notice is in the possession or under the control of the authority on whom the notice is served, the authority must supply the information required in such form and manner, and at such time, as is specified in the notice and, if the notice so requires, the information must be certified in one or both of the following ways:

(a) by the chief finance officer of the authority[7] or by such other person as may be specified in the notice[8]; and

(b) under arrangements made by the Audit Commission for Local Authorities in England and Wales[9].

If a local authority fails to comply with the above requirement, the Secretary of State may decide whether to exercise his powers, and how to perform his functions, under Part IV, or whether the authority has acted, or is likely to act, in accordance with Part IV, on the basis of such assumptions and estimates as he thinks fit[10]. In deciding whether to exercise his powers, and how to perform his functions, under Part IV, or whether an authority has acted, or is likely to act, in accordance with Part IV, the Secretary of State may also take into account any other information available to him, whatever its source and whether or not obtained under a provision contained in or made under the Local Government and Housing Act 1989 or any other enactment[11].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
3 Local Government and Housing Act 1989 s 65(1)(a). As to Pt IV (ss 39–66) (as amended) see paras 558–562 ante, 564–617 post.
4 Ibid s 65(1)(b).
5 Ibid s 65(1)(c).
6 Ibid s 65(1).
7 Ie within the meaning of ibid s 5: see para 335 ante.
8 Ibid s 65(2)(a).
9 Ibid s 65(2)(b). As to the Audit Commission for Local Authorities in England and Wales see para 653 et seq post.
10 Ibid s 65(3).
11 Ibid s 65(4).

(ii) Credit Approvals

564. Nature of credit approvals. Under Part IV of the Local Government and Housing Act 1989[1], specific approval is needed if a local authority[2] is to finance capital expenditure[3] through credit.

Subject to certain provisions[4], where a local authority has received a basic credit approval[5] or a supplementary credit approval[6], then, if it so determines, the approval may be treated wholly or partly:

(1) as authority not to charge to a revenue account[7] an amount of expenditure which is defrayed during the period for which the approval has effect and which is for capital purposes to which the approval applies[8]; or

(2) as authority, within the period for which the approval has effect, to

enter into or agree to a variation of a credit arrangement[9] for purposes to which the approval applies[10].

Credit approval is not needed for the funding of capital expenditure by other means, such as by grants[11], available capital receipts[12] or revenue.

1 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended).
2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
3 As to expenditure for capital purposes see para 562 ante.
4 Ie subject to the Local Government and Housing Act 1989 s 56, Sch 3 Pt I.
5 As to basic credit approvals see para 566 post.
6 As to supplementary credit approvals see para 567 post.
7 For the meaning of 'revenue account' see para 560 note 3 ante.
8 Local Government and Housing Act 1989 s 56(1)(a).
9 As to credit arrangements see para 579 et seq post.
10 Local Government and Housing Act 1989 s 56(1)(b).
11 As to grants see paras 531–544 ante.
12 As to capital receipts see paras 605–618 post.

565. Use of credit approvals. Where a local authority[1] has received a basic credit approval[2] or a supplementary credit approval[3] and that approval is not extinguished[4], then, if or to the extent that it has not made a determination with respect to it[5], the authority may, if it so determines, transfer the approval, reduced where appropriate[6], to another local authority, either in whole or in part; and, where such a transfer is made:

(1) the transfer of the approval (or part) is not to be regarded for the purposes of Part IV of the Local Government and Housing Act 1989[7] as its use by the transferor authority[8]; and

(2) Part IV[9] is to have effect as if the approval (subject to any reduction as mentioned above) had been issued, in whole or as to the part transferred, directly to the transferee authority[10].

To the extent that and at the time when, in reliance on a credit approval, an amount of expenditure which is not charged to a revenue account[11] of the authority concerned is defrayed, or the authority concerned enters into or agrees to a variation of a credit arrangement[12], the credit approval must be regarded as used and, accordingly, is not to be available on any subsequent occasion or for any other purpose[13].

A determination by a local authority[14] may not be made later than 30 September in the financial year[15] following that in which the authority defrays the expenditure or, as the case may be, enters into or varies the credit arrangement in question[16].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 As to basic credit approvals see para 566 post.
3 As to supplementary credit approvals see para 567 post.
4 Ie under the Local Government and Housing Act 1989 s 57 (see para 569 post) or Sch 3 Pt 1.
5 Ie under ibid s 56(1): see para 564 ante.
6 See note 4 supra.
7 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended).
8 Ibid s 56(2)(a).
9 Including ibid s 56.
10 Ibid s 56(2)(b).
11 For the meaning of 'revenue account' see para 560 note 3 ante.
12 As to credit arrangements see para 579 et seq post.

13 Local Government and Housing Act 1989 s 56(3). This provision applies whether or not the determination under s 56(1) (see para 564 ante) precedes the date on which the expenditure is defrayed or, as the case may be, the credit arrangement is entered into or varied: s 56(4).
14 Ie a determination under ibid s 56(1) that a credit approval is to be treated as mentioned in s 56(1)(a) or s 56(1)(b): see para 564 ante.
15 For the meaning of 'financial year' see para 559 note 1 ante.
16 Local Government and Housing Act 1989 s 56(5).

566. **Basic credit approvals.** Before the beginning of each financial year[1], the Secretary of State[2] must issue to each local authority[3], in the form of a notice in writing, a credit approval with respect to the authority's credit arrangements[4] and expenditure for capital purposes[5] during that year[6]. A credit approval so issued (referred to in Part IV of the Local Government and Housing Act 1989[7] as a 'basic credit approval') may be nil but, subject to that, must be expressed as an amount of money[8]. A basic credit approval is to have effect only for the financial year in respect of which it is issued and may be limited by excluding from the purposes for which the approval may be used capital purposes of a description specified in the approval[9]. Where regulations made by the Secretary of State so require, a basic credit approval must specify, directly or by reference to tables or other documents specified in the approval, a period (referred to in Part IV as the 'amortisation period') during which the authority to whom the approval is issued is required to set aside, from a revenue account[10], as provision to meet credit liabilities, amounts determined in accordance with the regulations[11].

1 For the meaning of 'financial year' see para 559 note 1 ante.
2 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
4 As to credit arrangements see para 579 et seq post.
5 As to expenditure for capital purposes see para 562 ante.
6 Local Government and Housing Act 1989 s 53(1).
7 Ie ibid Pt IV (ss 39–66) (as amended).
8 Ibid s 53(2).
9 Ibid s 53(3).
10 For the meaning of 'revenue account' see para 560 note 3 ante.
11 Local Government and Housing Act 1989 s 53(4). Under s 53(4), if the regulations so provide, a basic credit approval may specify different amortisation periods in relation to the use of the approval in respect of credit arrangements and expenditure for capital purposes of different descriptions: s 53(5). At the date at which this volume states the law no such regulations had been made pursuant to the power in s 53(4).

567. **Supplementary credit approvals.** Any Minister of the Crown[1] may at any time issue to a local authority[2], in the form of a notice in writing, a credit approval (referred to in Part IV of the Local Government and Housing Act 1989[3] as a 'supplementary credit approval')[4]. A supplementary credit approval must be expressed as an amount of money and must be limited to credit arrangements[5] and expenditure for capital purposes of a description specified in the approval (but, if the minister concerned considers appropriate, all capital purposes may be so specified)[6]. A supplementary credit approval is to have effect for such period as is specified in the approval; and where such an approval is issued not more than six

months after the end of a financial year[7], it may specify a period which begins or begins and ends at any time during that financial year[8].

1 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 363): Local Government and Housing Act 1989 s 66(1)(c) (amended by the Local Government (Grants from Structural Funds) Regulations 2000, SI 2000/589, reg 2(1), (5)). In relation to Wales, the function of a Minister of the Crown under the Local Government and Housing Act 1989 s 54(1) is exercisable by the National Assembly for Wales concurrently with any Minister of the Crown by whom it is exercisable except so far as it relates to a national park authority: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1; and para 107 ante. As to national park authorities see OPEN SPACES AND ANCIENT MONUMENTS vol 34 (Reissue) para 157 et seq. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.
2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
3 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended).
4 Ibid s 54(1). Subject to s 54(5), s 53(4), (5) (see para 566 ante) apply in relation to a supplementary credit approval as they apply in relation to a basic credit approval: s 54(4). As to basic credit approvals see para 566 ante. In the case of a supplementary credit approval issued in respect of expenditure which is treated by the authority concerned as expenditure for capital purposes by virtue only of directions under s 40(6), the approval may specify an amortisation period: s 54(5) (amended by the Local Government Finance (Supplementary Credit Approvals) Act 1997 s 2). As to expenditure for capital purposes see para 562 ante. For the meaning of 'amortisation period' see para 566 ante.
5 As to credit arrangements see para 579 et seq post.
6 Local Government and Housing Act 1989 s 54(2).
7 For the meaning of 'financial year' see para 559 note 1 ante.
8 Local Government and Housing Act 1989 s 54(3).

568. **Criteria for issuing credit approvals.** In determining the amount of a basic credit approval[1] or a supplementary credit approval[2] to be issued to a local authority[3], the Secretary of State[4] or other minister may have regard to such factors as appear to him to be appropriate[5]. The Secretary of State or other minister may, in particular, have regard:

(1) to the amount of any grants or contribution which it appears to him that the authority concerned has received and is likely to receive from any person in respect of expenditure incurred by the authority or to be incurred by it before the expiry of the period for which the credit approval is to have effect[6]; and

(2) to the amount of capital receipts[7] which it appears to him that the authority has received, might reasonably be expected to have received or to receive or are likely to receive before the expiry of the period for which the credit approval is to have effect[8].

However, in determining the amount of a basic credit approval, the Secretary of State must not take account of capital receipts to the extent that the authority concerned is required to set aside the receipts as provision for credit liabilities; and in determining the amount of a basic credit approval or a supplementary credit approval, the Secretary of State or other minister must not take account of capital receipts[9]. In determining the amount of the basic credit approval or of a supplementary credit approval to be issued to a particular local authority in any financial year[10], the Secretary of State or other minister must not take account of the extent to which it appears to him that the local authority is or is likely to be in a position to finance expenditure for capital purposes[11] from a revenue account[12].

1 As to basic credit approvals see para 566 ante.
2 As to supplementary credit approvals see para 567 ante.

3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

4 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

5 Local Government and Housing Act 1989 s 55(1).

6 Ibid s 55(2)(a).

7 For the purposes of ibid s 55, 'capital receipts' includes sums which constituted capital receipts for the purposes of the Local Government, Planning and Land Act 1980 Pt VIII (ss 71–85) (repealed), whether or not they fall to be treated as capital receipts under the Local Government and Housing Act 1989 s 58 (see para 606 post): s 55(5).

8 Ibid s 55(2)(b).

9 Ibid s 55(3) (amended by the Local Government Finance (Supplementary Credit Approvals) Act 1997 s 1). The Secretary of State or other minister must not take account of capital receipts to the extent that they are applied or paid as mentioned in s 59(7)–(9) (see para 614 post): Local Government and Housing Act 1989 s 55(3) (as so amended).

10 For the meaning of 'financial year' see para 559 note 1 ante.

11 As to expenditure for capital purposes see para 562 ante.

12 Local Government and Housing Act 1989 s 55(4). For the meaning of 'revenue account' see para 560 note 3 ante.

569. Specified capital grants. Particular provision is made for a defined group of grants called 'specified capital grants'[1]. The purpose of this particular provision is that where a grant is provided for a specific purpose, that is taken to reduce the authority's[2] need to borrow[3] for that purpose.

The following are deemed by regulations, made by the Secretary of State, to be specified grants for the purposes of the Local Government and Housing Act 1989:

(1) contributions paid to a local authority[4] towards the expense of assisting owners of defective housing, except to the extent that they are paid in annual sums payable for a period of ten years or more[5];

(2) contributions paid to a local authority in England if they are paid under the Housing Grants, Construction and Regeneration Act 1996[6] towards expenditure incurred by the authority on making relevant grants[7]; and

(3) certain contributions and subsidies paid to a local authority in Wales[8].

If at any time a local authority receives a specified capital grant, such, if any, of the authority's credit approvals as are relevant to that grant[9] must be reduced or, as the case may be, extinguished by deducting an amount equal to the grant[10].

Where[11] a deduction is consequently required in respect of a specified capital grant[12]:

(a) the deduction must be applied to the credit approvals which are relevant to the grant in the order in which those approvals were received[13];

(b) subject to head (d) below, the reduction or extinguishment of any such approval must be regarded as taking place when the grant is received[14];

(c) if the amount of the deduction exceeds the total of the credit approvals which are relevant to the grant and were received before the grant, the excess must be applied in reduction (or extinguishment) of credit approvals which are so relevant and are received later[15]; and

(d) any such reduction or extinguishment of a later credit approval as is referred to in head (c) above must be regarded as taking place when the approval is received[16].

In any case where:

(i) before the time when a specified capital grant is received by a local authority, the authority has made a determination[17] with respect to a credit approval which is relevant to that grant[18]; and

(ii) that credit approval is to any extent to be regarded as having been used before that time[19],

the credit approval must not, to that extent, be taken into account under the above provisions[20]; but, subject to that, the making of a determination[21] with respect to a credit approval does not affect the operation of those provisions in relation to it[22].

1 In the Local Government and Housing Act 1989 s 57, 'specified capital grants' means grants, contributions and subsidies: (1) which are paid to local authorities in aid of their expenditure for capital purposes (s 57(1)(a)); (2) which are neither commuted payments falling within s 63(2) (see para 577 post) nor single or other payments falling within s 63(3) (see para 577 post) (s 57(1)(b)); and (3) which are, or to the extent that they are, specified for the purposes of s 57 by regulations made by the Secretary of State (s 57(1)(c)). As to expenditure for capital purposes see para 562 ante. As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

3 As to borrowing by a local authority see para 561 note 10 ante.

4 Ie under the Housing Act 1985 s 569(1) (as amended): see HOUSING vol 22 (Reissue) para 587.

5 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 53.

6 Ie the Housing Grants, Construction and Regeneration Act 1996 s 132(1) or 92(1): see HOUSING vol 22 (Reissue) para 368.

7 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 54(2). For the purposes of reg 54, 'relevant grant' means:

(1) a disabled facilities grant within the meaning given to that expression in the Local Government and Housing Act 1989 s 101(2)(c) (repealed) (grants for improvements and repairs) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 54(1)(a)); or

(2) a grant available under the Housing Grants, Construction and Regeneration Act 1996 s 1 (grants for improvements and repairs) (see HOUSING vol 22 (Reissue) para 426) towards the cost of works required for the provision of facilities for disabled persons in dwellings and in the common parts of buildings containing one or more flats (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 54(1)(b)).

8 See ibid reg 55. The text refers to contributions and subsidies paid under:

(1) the Housing Act 1985 s 429(1) (see HOUSING vol 22 (Reissue) para 285) (contributions to improvement for sale schemes) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 55(a));

(2) the Local Government and Housing Act 1989 s 96(1) (see HOUSING vol 22 (Reissue) para 399) (contributions towards expenditure under Pt VII (ss 89–100) (as amended) (renewal areas)) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 55(b));

(3) the Local Government and Housing Act 1989 s 132(1) (repealed) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 55(c));

(4) the Local Government and Housing Act 1989 s 165(4) (as amended) (slum clearance subsidy) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 55(d));

(5) the Housing Grants, Construction and Regeneration Act 1996 s 92(1) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 55(e)); or

(6) the Housing Grants, Construction and Regeneration Act 1996 s 139(1) (as amended) (see HOUSING vol 22 (Reissue) para 368) (contributions towards

expenditure on relocation grants) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 55(f)).

9 For the purposes of the Local Government and Housing Act 1989 s 57, a credit approval is relevant to a specified capital grant if the approval has effect at the time the grant is received or at any time thereafter (s 57(3)(a)); and the purposes for which the approval may be used are or include the purposes towards expenditure on which the grant is made (s 57(3)(b)).

10 Ibid s 57(2).

11 Ie by virtue of ibid s 57(2).

12 Ibid s 57(4), which is expressed to be subject to s 57(5), (6) (see the text and notes 16–22 infra).

13 Ibid s 57(4)(a).

14 Ibid s 57(4)(b).

15 Ibid s 57(4)(c).

16 Ibid s 57(4)(d). Notwithstanding anything in s 57(4), any reduction or extinguishment of a credit approval which is required to be made under Sch 3 Pt I must be applied before any reduction or extinguishment under s 57: s 57(5).

17 Ie under ibid s 56(1): see para 564 ante.

18 Ibid s 57(6)(a).

19 Ie by virtue of ibid s 56(3) (see para 565 ante): see s 57(6)(b).

20 Ie under ibid s 57(2), (4): see the text and notes 10–16 supra.

21 Ie under ibid s 56(1): see para 564 ante.

22 Ibid s 57(6).

(iii) Credit Limits and Provision for Liabilities

A. CREDIT LIMITS

570. Aggregate credit limit. The aggregate credit limit[1] is a total limit on a local authority's[2] borrowing[3] and credit arrangements[4]. It is an overall control on the total level of debt an authority may incur at any one time. Each authority has its own aggregate credit limit[5].

A local authority may not enter into a credit arrangement at any time if to do so would at that time cause the total[6] to exceed the aggregate credit limit for the time being applicable to the authority[7]. A local authority may not at any time agree to a variation of a credit arrangement[8] if to do so would mean that, immediately after the variation, the total[9] would exceed the aggregate credit limit for the time being applicable to the authority[10].

On an application made by a local authority, the Secretary of State[11] may direct that, for any period specified in the direction, the amount which, apart from the direction, would be the authority's aggregate credit limit at any time during that period must be increased by an amount specified in the direction with respect to that period; and any increase specified in such a direction may be expressed to have effect subject to compliance with such terms and conditions as may be so specified[12].

1 For the meaning of 'aggregate credit limit' see para 571 post.

2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

3 As to borrowing by a local authority see para 561 note 10 ante.

4 As to credit arrangements see para 579 et seq post.

5 As to borrowing limits see para 600 et seq post.

6 Ie the total referred to in the Local Government and Housing Act 1989 s 44(1): see para 600 post.

7 Ibid s 50(4). The text refers to the aggregate credit limit for the time being applicable to the authority by virtue of s 62: see para 571 post.

8 Ie as mentioned in ibid s 51(1): see para 592 post.

9 Ie the total referred to in ibid s 44(1): see para 600 post.

10 Ibid s 51(3). The text refers to the aggregate credit limit for the time being applicable to the authority by virtue of s 62: see para 571 post.
11 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
12 Local Government and Housing Act 1989 s 62(2).

571. Calculation of the aggregate credit limit. For each local authority[1] there is an aggregate credit limit which at any time is the total at that time of:

(1) the authority's temporary revenue borrowing[2] limit[3];
(2) the authority's temporary capital borrowing limit[4];
(3) the authority's credit ceiling[5]; and
(4) the excess of the authority's approved investments[6] and cash[7] over its usable capital receipts[8].

If at any time an authority's usable capital receipts exceed its approved investments and cash referred to in head (4) above, the amount taken into account under that head must be a negative amount[9]. Where an amount taken into account under head (3) or head (4) above is a negative amount, it must be a deduction in determining the total referred to in that head[10].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 As to borrowing by a local authority see para 561 note 10 ante.
3 Local Government and Housing Act 1989 s 62(1)(a). Subject to s 62(4) (see infra), an authority's temporary revenue borrowing limit at any time is whichever is the less of:
(1) the total sums which at that time remain to be received by the authority and which, as income, fall or will fall to be credited to a revenue account of the authority for the current financial year (s 62(3)(a)); and
(2) the aggregate of: (a) the total sums which, up to and including that time (whether in the current or a previous financial year), the authority has disbursed in respect of expenditure which falls to be charged to a revenue account of the authority for the current financial year (s 62(3)(b)(i)); and (b) any relevant arrears in respect of which provision has been or is to be charged to such a revenue account or which have been or are to be written off and charged to such a revenue account (s 62(3)(b)(ii)).

For the purposes of head (2) supra, 'relevant arrears' are amounts in respect of income which remain to be received by the authority and which, as income, fall to be credited to a revenue account of the authority for the financial year beginning two years before the beginning of the current financial year: s 62(3). For the meaning of 'revenue account' see para 560 note 3 ante. For the meaning of 'financial year' see para 559 note 1 ante.

At any time in a financial year the amount which, apart from s 62(4), would be an authority's temporary revenue borrowing limit must be increased by the addition of an amount in respect of the immediately preceding financial year, being whichever is the less of:
(i) the excess (if any) of the total sums which, up to and including that time, the authority has disbursed in respect of expenditure falling to be charged to a revenue account of the authority for that preceding year over the total sums which, up to and including that time, the authority has received in respect of income falling to be credited to such a revenue account (s 62(4)(a)); and
(ii) the total sums which at that time remain to be received by the authority and which, as income, fall or will fall to be credited to a revenue account of the authority for that preceding year (s 62(4)(b)).

4 Ibid s 62(1)(b). An authority's temporary capital borrowing limit at any time is so much of the expenditure defrayed by the authority for capital purposes in the 18 months ending at that time as is due to be, but at that time has not yet been, reimbursed by any other person, excluding expenditure which is to be reimbursed or met out of grants from a Community institution other than contributions from any of the structural funds; and for this purpose it is immaterial whether the reimbursement is due as a result of an obligation arising by statute, contract or otherwise or is to take the form of a grant or other obligation voluntarily undertaken: s 62(5) (amended by the Local Government (Grants

from Structural Funds) Regulations 2000, SI 2000/589, reg 2(1), (3)). As to expenditure for capital purposes see para 562 ante. For the meaning of 'structural funds' see para 561 note 18 ante.

5 Ie as determined under the Local Government and Housing Act 1989 Sch 3 Pt III: see s 62(1)(c).

6 For the meaning of 'approved investments' see para 561 note 14 ante.

7 The reference in the Local Government and Housing Act 1989 s 62(1)(d) to approved investments and cash does not include investments or cash held for the purposes of such a superannuation fund or trust fund as is referred to in s 42(2)(h) or s 42(2)(i) (see para 561 ante): see s 62(1).

8 Ibid s 62(1)(d). Any reference in s 62 to an authority's usable capital receipts at any time is a reference to the usable part of the authority's capital receipts so far as they have not been applied before that time: s 62(8). As to capital receipts see paras 605–618 post. As to the usable part of capital receipts see para 610 post.

9 Ibid s 62(6).

10 Ibid s 62(7).

572. Credit ceiling. A local authority's[1] credit ceiling is the difference between its gross liabilities under its borrowing[2] and credit arrangements[3] and the provision it has made to meet those liabilities[4]. Each local authority had an initial credit ceiling fixed as at 1 April 1990[5].

At any time on or after 1 April 1990, a local authority's credit ceiling must be determined, subject to any prescribed[6] modifications, in accordance with the following provisions[7]. If, at any time on or after 1 April 1990, a credit approval is used by a local authority to any extent[8] then the authority's credit ceiling must at that time be increased by an amount equal to the extent to which the credit approval is so used[9]. If, at any time on or after 1 April 1990, a local authority sets aside an amount as provision to meet credit liabilities (whether or not pursuant to a requirement to do so) then[10] the authority's credit ceiling must at that time be reduced by an amount equal to the amount so set aside (and consequently that ceiling may, accordingly, be a negative amount)[11]. If, at any time on or after 1 April 1990 a local authority applies or transfers[12] an amount set aside[13], the authority's credit ceiling must at that time be increased by an amount equal to the amount so applied or transferred[14]. If, at any time on or after 1 April 1990, any debt of a local authority is reduced or extinguished[15], the authority's credit ceiling must at that time be reduced by an amount equal to the reduction in the debt or, as the case may be, to the amount of the extinguished debt (and consequently the credit ceiling may, accordingly, be a negative amount)[16]. If, at any time on or after 1 April 1990, a local authority is required[17] to repay or pay any sum to the Secretary of State, the authority's credit ceiling must at the time that sum is repaid or paid be increased by an amount equal to that sum[18].

Regulations make detailed provisions for adjustments to the credit ceiling[19].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

2 As to borrowing by a local authority see para 561 note 10 ante.

3 As to credit arrangements see para 579 et seq post.

4 Local Government and Housing Act 1989 s 62, Sch 3 Pt III para 8.

5 This was calculated in accordance with ibid Sch 3 Pt III paras 8, 9.

6 For the purposes of ibid Sch 3 Pt III para 10(1), 'prescribed' means prescribed by regulations made by the Secretary of State: Sch 3 Pt III para 10(2). As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

7 Ibid Sch 3 Pt III para 10(1). The Local Authorities (Capital Finance) (Amendment) (England) Regulations 2000, SI 2000/1773, have been made under the Local Government and Housing Act 1989 Sch 3 Pt III para 10.
8 Ie as mentioned in ibid s 56(3) (see para 565 ante): see Sch 3 Pt III para 11(1). If, in reliance on a credit approval, a local authority enters into or agrees to the variation of a credit arrangement of a description excluded by regulations made by the Secretary of State under Sch 3 Pt III para 11, no account must be taken under Sch 3 Pt III para 11(1) of that use of the credit approval: Sch 3 Pt III para 11(2).
9 Ibid Sch 3 Pt III para 11(2).
10 Ie subject to ibid Sch 3 Pt III para 12(2): see Sch 3 Pt III para 12(1). Schedule 3 Pt III para 12 does not apply with respect to:
(1) an amount which, in relation to a credit arrangement, other than one excluded by regulations under Sch 3 Pt III para 11, is applied or charged (as an amount of credit cover) as mentioned in s 50(3)(b) or s 50(3)(c) (see para 585 post) (Sch 3 Pt III para 12(2)(a));
(2) a Local Government, Planning and Land Act 1980 receipt which, in accordance with the Local Government and Housing Act 1989 Sch 3 Pt III para 9, is brought into account to determine the authority's initial credit ceiling (Sch 3 Pt III para 12(2)(b)); or
(3) so much of an amount set aside under s 63 (see para 573 post) as provision to meet credit liabilities as (in accordance with Sch 3 Pt IV) is referable to notional interest on credit arrangements (Sch 3 Pt III para 12(2)(c)).

For the purposes of Sch 3 Pt III para 12, an amount set aside under s 63(1) in respect of any financial year must be treated as set aside on the last day of that year: Sch 3 Pt III para 12(3). For the meaning of 'financial year' see para 559 note 1 ante.
11 Ibid Sch 3 Pt III para 12(1).
12 Ie under ibid s 64(2): see para 578 post.
13 Ie as mentioned in ibid s 64(1): see para 578 post.
14 Ibid Sch 3 Pt III para 13.
15 Ie by virtue of such a payment as is referred to in ibid s 157(1)(b): see para 515 ante.
16 Ibid Sch 3 Pt III para 14(1).
17 Ie under ibid s 157(7)(b): see para 515 ante.
18 Ibid Sch 3 Pt III para 14(2).
19 See the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, Pt X (regs 115–123).

B. PROVISION FOR CREDIT LIABILITIES

573. Minimum revenue provision. The Local Government and Housing Act 1989 requires local authorities[1] to make numerous provisions for different forms of liabilities for the borrowing[2] of money and for credit arrangements[3] entered into[4].

Without prejudice to any other provision of Part IV of the Local Government and Housing Act 1989[5] under which a local authority is required or authorised to set aside any amount as provision to meet credit liabilities, in each financial year[6] a local authority must set aside, from such revenue account[7] or accounts as the authority thinks fit, as provision to meet credit liabilities, an amount determined by the authority being not less than the minimum revenue provision for that year[8]. The statutory limit is a minimum only, local authorities may make greater provision than the statutory amount.

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 As to borrowing by a local authority see para 561 note 10 ante.
3 As to credit arrangements see para 579 et seq post.
4 Ie except for those arrangements described in regulations made under the Local Government and Housing Act 1989 Sch 3 Pt III para 11(2): see para 572 ante.
5 Ie ibid Pt IV (ss 39–66) (as amended): see s 63(1).
6 For the meaning of 'financial year' see para 559 note 1 ante.

7 For the meaning of 'revenue account' see para 560 note 3 ante.
8 Local Government and Housing Act 1989 s 63(1). The text refers to an amount determined by the authority being not less than the minimum revenue provision for that year referred to in Sch 3 Pt IV: see s 63(1). A determination under s 63(1) must be made not later than 30 September in the financial year following that to which the determination relates: s 63(5).

574. Adjusted credit ceiling. Any reference[1] to a local authority's[2] adjusted credit ceiling at any time or its adjusted initial credit ceiling is a reference to its credit ceiling or, as the case may be, initial credit ceiling, determined[3] in such manner as the Secretary of State[4] considers appropriate, by regulations made by him[5]. For the purpose of determining an authority's adjusted credit ceiling or adjusted initial credit ceiling at any time, regulations may require amounts which are taken into account in determining the authority's credit ceiling or initial credit ceiling to be treated as having been repaid, in whole or in part, by reference to amounts set aside as provision for credit liabilities and also, in such cases as may be specified in the regulations, may require a local authority to determine which of the amounts so taken into account are to be treated as so repaid[6].

1 Ie in the Local Government and Housing Act 1989 Sch 3 Pt IV.
2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
3 Ie in accordance with the Local Government and Housing Act 1989 Sch 3 Pt III (as modified) (see para 572 ante).
4 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
5 Local Government and Housing Act 1989 Sch 3 Pt IV para 18(1).
6 Ibid Sch 3 Pt IV para 18(2). As to the determination of the adjusted credit ceiling see further the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, regs 124, 125 (amended by SI 2000/1474); and the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, regs 126, 127, 128, 129, 129A (added by SI 2000/1474).

575. Calculation of the principal. Subject to certain provisions[1], for any financial year[2] other than that beginning on 1 April 1990, a local authority's[3] minimum revenue provision is the aggregate of:

(1) an amount in respect of principal which, except in so far as regulations made by the Secretary of State[4] otherwise provide, is the prescribed percentage[5] of the authority's adjusted credit ceiling on the last day of the immediately preceding year[6]; and

(2) an amount in respect of notional interest on each credit arrangement[7] entered into by the authority which came into being before the beginning of that year, other than an arrangement excluded by regulations[8].

For the financial year beginning on 1 April 1997 and every subsequent financial year of a local authority, the amount in respect of principal for the purposes of the above provision is the aggregate of all amounts which the authority is required to determine under the following provisions[9]. If the authority is required[10] to keep a housing revenue account for the current year[11], it must determine the amount which is equal to the sum of two per cent of its housing amount[12] and four per cent of its non-housing amount[13]. If the authority is not required to keep a housing revenue account for the current year, it must determine the amount equal to four per cent of its relevant amount[14]. The authority must determine the total amount, if any, which would fall to be repaid by it in the current year in respect of its

advances from a loans fund[15], if it had been required to repay the principal of each such advance outstanding on 1 April 1990 before the end of the relevant period[16] by equal annual instalments[17]. If the authority is a designated council[18], it must determine an amount equal to the total of any payments in respect of principal which fall to be made by it in the current year into a fund in relation to money which, by virtue of the order, is treated as its transferred debt[19]. The authority must determine the total amount which would fall to be repaid by it in the current year in respect of the credit approvals[20] issued to it, if, in relation to each such approval, it had been required to repay each relevant amount[21] by equal annual instalments before the end of the amortisation period specified in the approval[22]. The authority must also determine the total of all amounts set aside[23], if any, which were applied by it in the last year to meet credit liabilities[24] in respect of relevant credit arrangements[25].

1 Ie subject to the Local Government and Housing Act 1989 s 63, Sch 3 Pt IV para 15(2), (3) (see note 8 infra): see Sch 3 Pt IV para 15(1).
2 For the meaning of 'financial year' see para 559 note 1 ante.
3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
4 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
5 For the purposes of the Local Government and Housing Act 1989 Sch 3 Pt IV paras 15(1)(a), 16(1)(a), 'the prescribed percentage' means such percentage, which may be any percentage from nil to 100, as may be prescribed by regulations made by the Secretary of State; and different percentages may be so prescribed in relation to different amounts taken into account in determining an authority's adjusted credit ceiling or initial credit ceiling: Sch 3 Pt IV para 17.
6 Ibid Sch 3 Pt IV para 15(1)(a).
7 As to notional interest see para 576 post.
8 Local Government and Housing Act 1989 Sch 3 Pt IV para 15(1)(b). The text refers to an arrangement excluded by regulations under Sch 3 Pt III para 11: see para 572 ante. The Local Authorities (Capital Finance) (Amendment) (England) Regulations 2000, SI 2000/1773, have been made under the Local Government and Housing Act 1989 Sch 3 Pt IV para 15(1). In the case of a credit arrangement falling within s 49(3) (see para 584 post), the Secretary of State may by regulations provide that the amount referred to in Sch 3 Pt IV para 15(1)(b) is nil: Sch 3 Pt IV para 15(3).
9 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 131. The text refers to the aggregate of all amounts which the authority is required to determine under regs 132–137: reg 131.
10 Ie under the Local Government and Housing Act 1989 Pt VI (ss 74–88) (as amended).
11 'The current year' means any financial year for which a local authority is determining the amount of its minimum revenue provision: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 130.
12 For the purposes of ibid Pt XII (regs 130–153) (as amended), in relation to any such authority, except for the financial year beginning on 1 April 1997:
   (1) the housing amount is an amount determined in accordance with provisions of Pt XII referring to the authority's housing component on the last day of the last year (reg 132(2)(a));
   (2) the housing component on the last day of the last year is an amount determined in accordance with provisions of Pt XII referring to components of the authority's adjusted credit ceiling which are attributable to the exercise of housing functions (reg 132(2)(b));
   (3) the non-housing amount is an amount determined in accordance with provisions of Pt XII referring to the authority's non-housing component on the last day of the last year (reg 132(2)(c)); and
   (4) the non-housing component on the last day of the last year is an amount determined in accordance with provisions of Pt XII referring to components of the authority's adjusted credit ceiling which are attributable to the exercise of functions other than housing functions (reg 132(2)(d)).

13 Ibid reg 132(1).

14 Ibid reg 133(1). For the purposes of Pt XII, except for the financial year beginning on 1 April 1997, the relevant amount of any such authority is an amount determined in accordance with provisions of Pt XII referring to components of the authority's adjusted credit ceiling: reg 133(2).

15 For the purposes of ibid reg 134(2), an advance from a loans fund is an advance which was:

(1) made before 1 April 1990 from a loans fund established by the authority under the Local Government Act 1972 Sch 13 para 15 (see para 555 ante) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 134(3)(a));

(2) made by virtue of a limited approval for a purpose or class of purpose for which the approval had been given (reg 134(3)(b)); and

(3) not fully repaid to the loans fund before 1 April 1990 (reg 134(3)(c)).

16 'Relevant period', in relation to an advance from a loans fund, means the period beginning on 1 April 1990 and ending on the last day of the financial year in which the money borrowed by virtue of the limited approval for the advance is due to be repaid: ibid reg 134(1). 'Limited approval' means an approval given by the Secretary of State under the Local Government Act 1972 Sch 13 para 1(b) (see para 604 post) subject to a condition that the borrowing approved would be repaid within ten years after the date of the approval: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 134(1).

17 Ibid reg 134(2).

18 Ie under an order made under the Local Government Act 1985 s 66(1) or s 67(3) (discharge of residuary functions).

19 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 135.

20 For the purposes of ibid reg 136, 'credit approval' means any supplementary credit approval which is issued to the authority in respect of expenditure which is treated as expenditure for capital purposes by virtue only of directions under the Local Government and Housing Act 1989 s 40(6) (capital purposes), and specifies an amortisation period: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 136(1) (definition substituted by SI 1998/371). As to supplementary credit approvals see para 567 ante. As to expenditure for capital purposes see para 562 ante. For the meaning of 'amortisation period' see para 566 ante.

21 'Relevant amount' means an amount equal to the extent to which a credit approval has, during any financial year before the current year, been used as mentioned in the Local Government and Housing Act 1989 s 56(3) (see para 565 ante): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 136(1).

22 Ibid reg 136(2).

23 'Amount set aside' means any amount for the time being set aside by a local authority (whether voluntarily or pursuant to a requirement under the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended)) as provision to meet credit liabilities: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, regs 137(1), 154(1).

24 Ie as described in the Local Government and Housing Act 1989 s 64(1)(b) (see para 578 post): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 137(2).

25 Ibid reg 137(2). For the purposes of reg 137(2), a credit arrangement is a relevant credit arrangement if its initial cost was nil and, at the time an amount set aside is applied to meet any liability of the authority in respect of it, it has not been varied as mentioned in the Local Government and Housing Act 1989 s 51(1) (see para 592 post) (variation of credit arrangements): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 137(3).

576. Calculation of the notional interest. The Local Government and Housing Act 1989 requires local authorities[1] to make provision for notional interest on credit arrangements[2]. The purpose of this is to ensure that the full cost of the arrangement is acknowledged, and that there is no regulatory incentive to choose a credit arrangement over borrowing[3].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

2 As to the amount of notional interest on a credit arrangement for any financial year see the Local Government and Housing Act 1989 s 63, Sch 3 Pt IV para 19. For the meaning of

'financial year' see para 559 note 1 ante. As to credit arrangements see para 579 et seq post. As to calculation of the principal see para 575 ante.

3 As to borrowing by a local authority see para 561 note 10 ante.

577. **Duty to set amounts aside to meet credit liabilities.** Where[1] the Secretary of State[2] makes to a local authority[3] a commuted payment[4] the authority must, at the time the payment is received, set aside an amount equal to that payment as provision to meet credit liabilities[5]. If[6] the Secretary of State or any other Minister of the Crown[7] commutes into a single payment (or into a smaller number of payments than would otherwise be payable) sums which would otherwise have been paid to a local authority annually or by reference to any other period of time, the authority must, at the time that single payment or, as the case may be, each of that smaller number of payments is received, set aside an amount equal to the payment as provision to meet credit liabilities[8]. Where a local authority receives any sum towards the authority's expenditure on capital purposes[9] by way of grant from a Community institution other than a contribution from any of the structural funds[10], it must at the time the sum is received, set aside an amount equal to that sum as provision to meet credit liabilities[11].

1 Ie by virtue of the Local Government and Housing Act 1989 s 157: see para 515 ante.

2 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

4 Ie within the meaning of the Local Government and Housing Act 1989 s 157: see para 515 ante.

5 Ibid s 63(2). As to the setting aside of capital receipts see s 59(1); and para 611 post. As to the setting aside of capital receipts not wholly in money see s 61(4); and para 616 post. As to the setting aside of amounts from the revenue accounts see s 50(3); and para 585 post. For the meaning of 'revenue account' see para 560 note 3 ante.

6 Ie otherwise than by virtue of ibid s 157 (see para 515 ante): see s 63(3).

7 For the meaning of 'Minister of the Crown' see para 567 note 1 ante.

8 Local Government and Housing Act 1989 s 63(3).

9 As to expenditure for capital purposes see para 562 ante.

10 For the meaning of 'structural funds' see para 561 note 18 ante.

11 Local Government and Housing Act 1989 s 63(4) (amended by the Local Government (Grants from Structural Funds) Regulations 2000, SI 2000/589, reg 2(1), (4)).

578. **Use of amounts set aside.** Amounts for the time being set aside by a local authority[1] (whether voluntarily or pursuant to a requirement under Part IV of the Local Government and Housing Act 1989[2]) as provision to meet credit liabilities may be applied only for one or more of the following purposes:

(1) to meet any liability of the authority in respect of money borrowed[3] by the authority, other than a liability in respect of interest[4];

(2) to meet any liability of the authority in respect of credit arrangements[5], other than those excluded by regulations[6]; and

(3) where a credit approval has been used as authority not to charge particular expenditure to a revenue account[7], to meet that expenditure[8].

If, on the date which is the relevant date[9] for any financial year, a local authority's credit ceiling[10] is a negative amount, any such amount as is referred to above may in that financial year be applied for purposes specified by regulations made by the Secretary of State[11] or be transferred to a

specified body[12]. The aggregate of the amounts which may be so applied by a local authority in any financial year must not exceed the amount by which the authority's credit ceiling on the relevant date is less than nil[13].

An amount set aside[14] may be applied by a relevant authority[15] to meet any expenditure for capital purposes[16] other than excluded expenditure[17]. Subject to a specified condition[18], an amount set aside may be applied by the authority[19] to meet any expenditure which[20] is to be charged to a revenue account of the authority[21]. Subject to a specified condition[22], an amount set aside may be transferred by a relevant authority[23] in any of the following cases to a body specified for the case in question:

(a) in the case of a relevant authority which is a county council, a county borough council, a district council, the Greater London Authority, a functional body, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly[24], to a health authority[25] or a special health authority[26] acting within the relevant authority's area[27];

(b) in the case of a relevant authority which is a county council, a district council, a county borough council or the Council of the Isles of Scilly, to the police authority whose police area as listed[28] includes the relevant authority's area[29];

(c) in the case of a relevant authority which is a non-metropolitan district council, to the county council for the district[30];

(d) in the case of a relevant authority which is a metropolitan district council, to the fire and civil defence authority[31] of which the relevant authority is a constituent council[32];

(e) in the case of a relevant authority which is a London borough council or the Common Council of the City of London, to the London Fire and Emergency Planning Authority[33];

(f) in the case of a relevant authority which is a county council, county borough council or non-metropolitan district council, to a combined fire authority constituted by a combination scheme[34] of which the relevant authority is a constituent council[35];

(g) in the case of a relevant authority which is a combined fire authority, to a constituent council of the relevant authority[36];

(h) in the case of a relevant authority which is a London borough council or the Common Council of the City of London or a metropolitan district council, to an authority established by order[37] of which the relevant authority is a constituent council[38]; and

(i) in the case of a relevant authority which is a waste disposal authority, to a constituent council of the relevant authority[39].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended).
3 As to borrowing by a local authority see para 561 note 10 ante.
4 Local Government and Housing Act 1989 s 64(1)(a).
5 As to credit arrangements see para 579 et seq post.
6 Ie under the Local Government and Housing Act 1989 s 62, Sch 3 Pt III para 11 (see para 572 ante): see s 64(1)(b).
7 For the meaning of 'revenue account' see para 560 note 3 ante.
8 Local Government and Housing Act 1989 s 64(1)(c).
9 References in ibid s 64(2), (3) to the relevant date must be construed as follows: (1) for the financial year beginning on 1 April 1990, the relevant date is that date (s 64(4)(a)); and (2) for any subsequent financial year, the relevant date is the last day of the preceding financial year (s 64(4)(b)). For the meaning of 'financial year' see para 559 note 1 ante.

10 Ie as determined under ibid Sch 3 Pt III (see para 572 ante): see s 64(2).

11 Ibid s 64(2)(a). As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

12 Ibid s 64(2)(b). Regulations under s 64(2) may specify conditions with which a local authority must comply in applying or transferring any amount as mentioned in s 64(2) and with respect to any amount so applied or transferred; and an amount must not be taken to be applied or transferred under s 64(2) unless any such conditions are complied with: s 64(5).

13 Ibid s 64(3).

14 Ie other than an amount set aside in respect of a capital receipt to which the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 71 (revoked) applies: see reg 156(2). 'Amount set aside' means any amount for the time being set aside by a local authority (whether voluntarily or pursuant to a requirement under the Local Government and Housing Act 1989 Pt IV (as amended)) as provision to meet credit liabilities: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 154(1).

15 Ie under the Local Government and Housing Act 1989 s 64(2)(a): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 156(2). For the purposes of Pt XIII (regs 154–159) (as amended), a local authority is a relevant authority if: (1) on the relevant date for any financial year, its credit ceiling, as determined under the Local Government and Housing Act 1989 Sch 3 Pt III, is a negative amount (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 154(2)(a)); and (2) it has no money outstanding by way of borrowing other than disregarded borrowing within the meaning given to that expression in reg 65 (reg 154(2)(b)).

16 As to expenditure for capital purposes see para 562 ante.

17 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 156(2). For the purposes of reg 156, 'excluded expenditure' means expenditure for capital purposes on the making of a grant, an advance or other financial assistance which:

(1) is to a housing association (within the meaning given to that expression in the Housing Associations Act 1985 s 1 (as amended) (see HOUSING vol 22 (Reissue) para 7)) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 156(1)(a)); and

(2) is towards expenditure for which the housing association receive or have received a grant under the Housing Act 1996 s 18 (as amended), the Housing Act 1988 s 50 (as amended), the Housing Associations Act 1985 s 41(1) (repealed) or the Housing Act 1974 s 29(1) (repealed) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 156(1)(b)).

18 The specified condition is that in applying an amount set aside as mentioned in ibid reg 157(1), a local authority must ensure that the total amount so applied in any financial year does not exceed the amount of the authority's commutation adjustment for that year determined in accordance with Sch 2, Pt II to the regulations: reg 157(3).

19 Ie under the Local Government and Housing Act 1989 s 64(2)(a): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 157(1).

20 Ie in accordance with the Local Government and Housing Act 1989 s 41 (see para 560 ante): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 157(1).

21 Ibid reg 157(1). Regulation 157 applies to a local authority if, on the relevant date for any financial year, its credit ceiling, as determined under the Local Government and Housing Act 1989 Sch 3 Pt III, is a negative amount and if:

(1) any debt of the authority to the Public Works Loan Commissioners was reduced or extinguished by a commuted payment (within the meaning which that expression has in s 157 (see para 515 ante)) paid by the Secretary of State to the Commissioners in the financial year beginning on 1 April 1992 (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 157(2)(a)); or

(2) the Secretary of State paid a commuted payment to the authority in that financial year (reg 157(2)(b)).

'Relevant date' must be construed in accordance with the Local Government and Housing Act 1989 s 64(4) (see note 9 supra): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 154(1).

22 The specified conditions are as follows: see ibid reg 158. In transferring an amount set aside to a body mentioned in reg 158 ('the transferee'), and in respect of any amount so transferred, a relevant authority must comply with the conditions specified in

reg 159(2), (3): reg 159(1). A relevant authority may not, in any financial year ('the current year'), transfer an amount set aside unless it is satisfied that the relevant expenditure:

(1) is expenditure for capital purposes (reg 159(2)(a));
(2) in the case of an amount set aside in respect of a capital receipt to which reg 71 (revoked: see note 14 supra) applies, is for the purposes of or in connection with any of the matters mentioned in reg 155 (reg 159(2)(b));
(3) is not excluded expenditure within the meaning given to that expression in reg 156 (reg 159(2)(c));
(4) has been, or is to be, incurred in the current year or in the financial year immediately preceding or immediately following the current year (reg 159(2)(d)); and
(5) is in connection with the exercise by the transferee of functions which are substantially for the benefit of the whole or any part of the relevant authority's area (reg 159(2)(e)).

'Relevant expenditure', in relation to the transfer of an amount set aside, means the expenditure which is to be met by the amount transferred: reg 154(1).

In relation to any transfer of an amount set aside:

(a) where, at the time of the transfer, the relevant expenditure has not been incurred, the amount transferred by the relevant authority may not exceed 50% of the transferee's estimate of that expenditure (reg 159(3)(a)); and
(b) subject to reg 159(4), where, at the time of the transfer, the relevant expenditure has already been incurred, the amount transferred by the relevant authority may not exceed 50% of the amount of that expenditure (reg 159(3)(b)).

For the purposes of reg 159(3)(b), in determining the amount of the relevant expenditure incurred, the relevant authority must disregard any expenditure for which an amount set aside has already been transferred in reliance upon an estimate provided by the transferee: reg 159(4).

23 Ie under the Local Government and Housing Act 1989 s 64(2)(b): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 158.

24 Ie one of the councils specified in the Local Government and Housing Act 1989 s 39(1)(a)–(e) (see para 559 ante): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 158(a).

25 'Health authority' means an authority established by order under the National Health Service Act 1977 s 8 (as amended) (see NATIONAL HEALTH SERVICE vol 33 (Reissue) para 51 et seq): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 154(1).

26 'Special health authority' means a body established by order under the National Health Service Act 1977 s 11 (as amended) (see NATIONAL HEALTH SERVICE vol 33 (Reissue) para 78): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 154(1).

27 Ibid reg 158(a).

28 Ie listed in the Police Act 1996 Sch 1 (as amended): see POLICE vol 36(1) (Reissue) para 313.

29 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 158(b).

30 Ibid reg 158(c).

31 Ie established by the Local Government Act 1985 Pt IV (ss 23–42) (as amended): see para 545 ante.

32 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 158(d).

33 Ibid reg 158(e) (amended by SI 2000/1553).

34 Ie a combined fire authority under the Fire Services Act 1947: see FIRE SERVICES vol 18(2) (Reissue) para 24 et seq.

35 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 158(f).

36 Ibid reg 158(g).

37 Ie under the Local Government Act 1985 s 10(1): see PROTECTION OF ENVIRONMENT AND PUBLIC HEALTH vol 38 (Reissue) para 171 et seq.

38 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 158(h).

39 Ibid reg 158(i).

(iv) Credit Arrangements

A. REGULATION OF CREDIT ARRANGEMENTS

579. Types of credit arrangements. The purpose of the provisions discussed in this and the following paragraphs[1] is to regulate financial arrangements which have the same effect as borrowing[2] but which are not legally classified as such. These provisions do not prohibit the forms of credit described. Rather they seek to ensure that such arrangements are taken into account in calculating the local authority's[3] credit limits. There are broadly four types of credit arrangements under the Local Government and Housing Act 1989: (1) leases[4]; (2) extended credit contracts[5]; (3) private finance transactions[6]; and (4) transitional credit arrangements[7].

Where a contract constitutes, or two or more contracts taken together constitute, a credit arrangement[8], no account must be taken[9] of any later contract which has the effect of varying the effect of the contract or, as the case may be, of the two or more contracts taken together[10]. If an existing contract is varied and the variation does not in law itself constitute a contract, it must be regarded as such for these purposes and, accordingly[11], the existing contract and the variation must be regarded as two contracts to be taken together[12].

A contract is not a credit arrangement to the extent that it is a contract under which a local authority borrows money; and a lease or contract which is excluded from this provision by regulations made by the Secretary of State[13] is not a credit arrangement[14]. It is immaterial for these purposes whether the consideration given or received by a local authority under any contract is given to or received from the person by whom the land, goods, services or other benefit are in fact provided to the authority; and for these purposes[15] in any case where the consideration under a contract consists, in whole or in part: (a) of an undertaking to do or to refrain from doing something at a future time (whether specified or not)[16]; or (b) of a right to do or to refrain from doing something at such a future time[17], that consideration is to be regarded as neither given nor received until the undertaking is performed or, as the case may be, the right is exercised[18].

1 Ie the Local Government and Housing Act 1989 ss 48–52: see para 580 et seq post.
2 As to borrowing by a local authority see para 561 note 10 ante.
3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
4 As to leases see para 580 post.
5 As to extended credit contracts see para 581 post.
6 As to private finance transactions see para 582 post.
7 As to transitional credit arrangements see para 583 post.
8 In relation to a credit arrangement:
   (1) any reference in the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended) to consideration given or to be given by the local authority under the arrangement does not include a reference to any consideration which is given before the time the arrangement comes into being (as defined in s 48(3) (see para 580 post)) (s 66(3)(a)); and
   (2) any reference in Pt IV (as amended) to a liability of the local authority under the arrangement does not include a reference to a liability which is met by the making of a payment before that time (s 66(3)(b)).
9 Ie under ibid s 48: see s 48(4).
10 Ibid s 48(4).
11 Ie subject to ibid s 48(4): see the text to note 10 supra.
12 Ibid s 48(8).

13 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
14 Local Government and Housing Act 1989 s 48(5). The Local Authorities (Capital Finance, Approved Investments and Contracts) (Amendment) Regulations 2000, SI 2000/1033, have been made under the Local Government and Housing Act 1989 s 48(5).
15 Ie for the purposes of ibid s 48 and any of the provisions of ss 49–66, Sch 3 relating to credit arrangements: see s 48(6).
16 Ibid s 48(6)(a).
17 Ibid s 48(6)(b).
18 Ibid s 48(6).

580. Leases. A local authority[1] is to be taken for the purposes of Part IV of the Local Government and Housing Act 1989[2] to have entered into a credit arrangement in any case where it becomes the lessee of any property (whether land or goods)[3] and, in any such case, the 'credit arrangement' is the lease[4].

The following are excluded from being credit arrangements:

(1) a lease if, on the date on which the authority becomes the lessee, the authority estimates that the value of the consideration which will have been given by it in respect of the lease at the end of a period of one year commencing on that date, is not less than 90 per cent of the capital cost of the lease[5];

(2) an operating lease[6] and an arrangement[7], if it is a credit arrangement, if the termination value of the asset[8] is not less than 10 per cent of its value on the commencement date[9], and the lease, or the lease and the arrangement, does not provide, or do not together provide, for: (a) the transfer of the property in the asset to the authority[10]; (b) the renewal or continuation of the lease or the arrangement on terms which provide for a transfer of the property in the asset to the authority[11]; (c) the renewal or continuation of the lease or the arrangement for any period for a consideration which is materially less than the amount that would reasonably be regarded, on the commencement date, as the open market rent for that period[12]; or (d) the receipt by the authority of any consideration which is equivalent, or determined by reference, to the value of the asset when the lease expires, the arrangement terminates or the period of any renewal or continuation of the lease or the arrangement terminates[13]; and

(3) a lease of any property if: (a) it is assigned to the authority by a new town corporation[14]; (b) it is granted to the authority in accordance with regulations[15]; or (c) a local authority becomes the lessee by virtue of certain statutory provisions[16].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended): see s 48(1).
3 Ibid s 48(1)(a). Subject to s 52 (see para 583 post), references in Pt IV (as amended), other than s 48, to a credit arrangement do not apply to a credit arrangement which comes into being before 1 April 1990; and for the purpose of Pt IV (as amended) a credit arrangement comes into being where s 48(1)(a) applies, at the time the local authority becomes the lessee: s 48(3)(a).

Any credit arrangement which is a lease is to be excluded from s 49(2) (see para 589 post) (initial and subsequent cost of credit arrangements): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 26(1).
4 Local Government and Housing Act 1989 s 48(1).

5 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 19.
6 For the purposes of ibid reg 20, 'operating lease' means a lease by a local authority of any vehicle, vessel, plant, machinery or apparatus: reg 20(1)(a).
7 For the purposes of ibid reg 20, in relation to an operating lease, 'arrangement' means any arrangement (whether or not a credit arrangement) which is entered into in connection with the lease: reg 20(1)(b)(i).
8 For the purposes of ibid reg 20, in relation to an operating lease, 'the asset' means the asset which is acquired by the authority under the lease: reg 20(1)(b)(ii).
9 For the purposes of ibid reg 20, in relation to an operating lease, 'the commencement date' means the date on which the authority becomes the lessee under the lease, or, if earlier, the date on which the arrangement is made: reg 20(1)(b)(iii).
10 Ibid reg 20(2)(a).
11 Ibid reg 20(2)(b).
12 Ibid reg 20(2)(c).
13 Ibid reg 20(2)(d). For the purposes of reg 20(2), the termination value of the asset is the amount which, on the commencement date, the authority estimates will be the value of the asset: (1) when the lease expires, or the arrangement terminates (reg 20(3)(a)); or (2) where the authority has a right to renew or continue the lease or the arrangement, on the latest date on which the lease or arrangement could expire or terminate if the authority exercised that right (reg 20(3)(b)).
14 Ibid reg 24(1)(a).
15 Ie made under the Housing Act 1988 s 100 (repealed) (tenants continuing as tenants of public sector landlord): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 24(1)(b).
16 Ibid reg 24(2). The provisions referred to in the text are:
   (1) the Local Government Changes for England (Property Transfer and Transitional Payments) Regulations 1995, SI 1995/402 (as amended) (see para 66 ante) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 24(2)(a));
   (2) the Police and Magistrates' Courts Act 1994 (Commencement No 5 and Transitional Provisions) Order 1994, SI 1994/3262, art 9 (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 24(2)(b));
   (3) a combination scheme under the Fire Services Act 1947 (see FIRE SERVICES) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 24(2)(c));
   (4) the Local Government Reorganisation (Wales) (Property etc) Order 1996, SI 1996/532 (see para 66 ante) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 24(2)(d));
   (5) the National Park Authorities (England) Order 1996, SI 1996/1243, art 15, or an agreement under the Environment Act 1995 s 76 (agreements as to incidental matters) or an award under s 73(3) (see OPEN SPACES AND ANCIENT MONUMENTS vol 34 (Reissue) paras 158, 194) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 24(2)(e));
   (6) the Police Act 1997 (Commencement No 5 and Transitional Provisions) Order 1998, SI 1998/354, art 5 (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 24(2)(f) (added by SI 1998/602));
   (7) any order, scheme or other instrument made under the Greater London Authority Act 1999 or the Regional Development Agencies Act 1998 (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 24(2)(g) (added by SI 2000/1033)); or
   (8) any scheme under the Access to Justice Act 1999 s 105, Sch 14 para 33 (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 24(2)(h) (added by SI 2000/723)).

581. Extended credit contracts. A local authority[1] is to be taken for the purposes of Part IV of the Local Government and Housing Act 1989[2] to have entered into a credit arrangement in any case (excluding where the authority becomes the lessee of any property) where, under a single contract or two or more contracts taken together, it is estimated by the authority that the value of the consideration which the authority has still to give at the end of a relevant financial year[3] for or in connection with the provision to the authority of any land, goods or services or any other kind of benefit is greater than the value of the consideration (if any) which the authority was

still to receive immediately before the beginning of that financial year[4], and, in any such case, the 'credit arrangement' is the single contract or, as the case may be, the two or more contracts taken together[5].

The estimate required to be made under the above provision must be made at the time the contract or, as the case may be, the later or last of the contracts constituting the credit arrangement is entered into[6].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended): see s 48(1).
3 The reference in ibid s 48(1)(b) to a relevant financial year is a reference to a financial year which begins after the contract or, as the case may be, the first of the contracts constituting the arrangement was entered into: 48(2). For the meaning of 'financial year' generally see para 559 note 1 ante.
4 Ibid s 48(1)(b). Subject to s 52 (see para 583 post), references in Pt IV (as amended), other than s 48, to a credit arrangement do not apply to a credit arrangement which comes into being before 1 April 1990; and for the purpose of Pt IV (as amended) a credit arrangement comes into being where s 48(1)(b) applies, at the time the contract or, as the case may be, the later or latest of the contracts constituting the arrangement is entered into (s 48(3)(b)).
5 Ibid s 48(1).
6 Ibid s 48(2).

582. Private finance transactions. A local authority[1] is to be taken for the purposes of Part IV of the Local Government and Housing Act 1989[2] to have entered into a credit arrangement in any case where the authority enters into a transaction of a description for the time being prescribed for these purposes by regulations made by the Secretary of State[3].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended): see s 48(1).
3 Ibid reg 48(1)(c). Subject to s 52 (see para 583 post), references in Pt IV (as amended), other than s 48, to a credit arrangement do not apply to a credit arrangement which comes into being before 1 April 1990; and for the purpose of Pt IV (as amended) a credit arrangement comes into being where s 48(1)(c) applies, at the time the authority enters into the transaction concerned or such other time as may be specified in the regulations concerned (s 48(3)(c)).

As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

A private finance transaction which, apart from the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 17, would not be a credit arrangement is prescribed for the purposes of the Local Government and Housing Act 1989 s 48(1)(c): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 17.

The Local Authorities (Capital Finance and Approved Investments) (Amendment) Regulations 1999, SI 1999/1852, have been made under the Local Government and Housing Act 1989 s 48(1)(c).

583. Transitional credit arrangements. A local authority[1] is to be taken to have entered into a transitional credit arrangement if[2] the arrangement came into being on or after 7 July 1988 and before 1 April 1990 and, except in so far as any provision of Part IV of the Local Government and Housing Act 1989[3] otherwise provides, any reference in Part IV to a credit arrangement includes a reference to a transitional credit arrangement[4].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

2 Applying the rules in the Local Government and Housing Act 1989 s 48(3) (see paras 580–582 ante): see s 52(1).

3 Ie ibid Pt IV (ss 39–66) (as amended): see s 52(1).

4 Ibid s 52(1). Notwithstanding that a credit arrangement came into being as mentioned in s 52(1) it is not a transitional credit arrangement if:

(1) under the arrangement the local authority concerned became the lessees of any property (whether land or goods) and the arrangement was a credit arrangement by reason only of s 48(1)(a) (see para 580 ante) (s 52(2)(a));

(2) by virtue of the Local Government, Planning and Land Act 1980 s 80(11) (now repealed) or s 80(12) (now repealed) (valuation etc) the amount of prescribed expenditure which the authority is to be taken as having paid on entering into the arrangement was nil (Local Government and Housing Act 1989 s 52(2)(b));

(3) by virtue of regulations under the Local Government, Planning and Land Act 1980 Sch 12 para 4 (now repealed), any expenditure of the authority under the arrangement was not prescribed expenditure (Local Government and Housing Act 1989 s 52(2)(c)); or

(4) the arrangement related only to works which, in whole or in part, were carried out before 1 April 1990 and in relation to which, by reason only of regulations under the Local Government, Planning and Land Act 1980 s 80A(7) (now repealed) (payment for works), s 80A(1) (now repealed) did not apply or, to the extent that the works were carried out on or after that date, would not have applied if they had been carried out before that date (Local Government and Housing Act 1989 s 52(2)(d)).

584. **Excluded credit arrangements.** The provision regarding the subsequent cost of credit arrangements[1] does not apply to a credit arrangement of a description excluded from that provision by regulations made by the Secretary of State[2]; and, in relation to a credit arrangement which is so excluded, such regulations must make provision for the method of calculating the initial cost and the cost of the arrangement at any time[3].

A local authority[4] may not at any time borrow[5] an amount which would cause the total of:

(1) the amount outstanding at that time by way of principal of money borrowed by the authority[6]; and

(2) the aggregate cost at that time of the credit arrangements entered into by the authority, other than arrangements excluded by regulations[7],

to exceed the aggregate credit limit for the time being applicable to the authority[8].

Amounts for the time being set aside by a local authority (whether voluntarily or pursuant to a requirement under Part IV of the Local Government and Housing Act 1989[9]) as provision to meet credit liabilities may[10] be applied only for certain purposes, including to meet any liability of the authority in respect of credit arrangements, other than those excluded by regulations[11].

The following are excluded from being credit arrangements:

(a) a lease or a contract if the authority estimates, at the time it becomes the lessee or enters into the contract, that the total value of the consideration which will fall to be given by it in respect of the lease or the contract, or the lease or the contract taken together with any other arrangement (whether a lease or a contract) which it has entered into with the same person, or an associate of his, in the same financial year, will not exceed £12,000[12];

(b) a contract between a local authority and a residuary body[13] if it provides for a transfer of land to the authority[14];

(c) a contract which provides:

(i) for the construction or enhancement of a dwelling[15], or the provision of a dwelling by the conversion of a building or part of a building, for the authority on land in which the authority was a freehold or leasehold interest[16]; and

(ii) that the authority is required, after the carrying out of the works, to grant a shared ownership lease[17] of the dwelling or to dispose of the freehold or grant a long lease[18] of the dwelling to any person other than a public body[19] or a company which is a regulated company[20];

(d) a lease or a contract if the authority becomes lessee under the lease or enters into the contract as an investment for the purposes of a superannuation fund which the authority is required to keep[21]; and

(e) a contract which would not constitute a credit arrangement if the authority, in making the relevant estimates[22], disregarded an amount of consideration equal to three per cent of the total value of the consideration falling to be given by it under the contract[23].

1 Ie the Local Government and Housing Act 1989 s 49(2) (see para 589 post): see s 49(3).

2 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

3 Local Government and Housing Act 1989 s 49(3). The Local Authorities (Capital Finance and Approved Investments) (Amendment) Regulations 1999, SI 1999/1852, the Local Authorities (Capital Finance) (Amendment) (England) Regulations 1999, SI 1999/3423, and the Local Authorities (Capital Finance) (Amendment) (Wales) Regulations 2000, SI 2000/992, have been made under the Local Government and Housing Act 1989 s 49(3).

4 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

5 References in the Local Government and Housing Act 1989 ss 44, 45–47 to borrowing by an authority are references to borrowing not only under s 43 (see para 594 post) but also under any other power for the time being available to the authority under any enactment, whenever passed: s 44(4). As to borrowing by a local authority see also para 561 note 10 ante.

6 Ibid s 44(1)(a).

7 Ie under ibid Sch 3 para 11 (see para 572 ante): see s 44(1)(b).

8 Ie by virtue of ibid s 62 (see para 572 ante): see s 44(1). For the purposes of s 44(1) the temporary use by a local authority for a purpose other than that of the fund in question of money forming part of such a superannuation fund or trust fund as is referred to in s 42(2)(h) or s 42(2)(i) (see para 561 ante) must be treated as borrowing: s 44(5).

9 Ie ibid Pt IV (ss 39–66) (as amended): see s 64(1); and para 578 ante.

10 Ie subject to ibid s 64(2) (see para 578 ante): see s 64(1).

11 Ie under ibid Sch 3 para 11 (see para 572 ante): see s 64(1)(b).

12 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 18(1). For the purposes of reg 18(1):

(1) a local authority is to be deemed to have entered into another arrangement with the same person, or an associate of his, if it has acquired a lease under which that person or associate is the lessor (reg 18(2)(a)); and

(2) two persons are associates of each other if, for the purposes of the Companies Act 1985, one of them is a subsidiary of the other, or they are both subsidiaries of some other person (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 18(2)(b)).

13 For the purposes of ibid reg 21, 'residuary body' means the Local Government Residuary Body (England) or the Residuary Body for Wales (Corff Gweddilliol Cymru): reg 21(1).

14 Ibid reg 21(2).

15 For the purposes of ibid reg 22, 'dwelling' means any building or part of a building which is occupied as a dwelling, or is a hostel providing accommodation for persons who, for the purposes of the Housing Act 1996 Pt VII (ss 175–218) (as amended) (see HOUSING vol 22 (Reissue) para 244 et seq), are homeless, or persons who have a special need for

accommodation arising from physical or mental disability, age, infirmity or other special social disability or disadvantage: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 22(1).

16 Ibid reg 22(3)(a) read with reg 22(2).

17 For the purposes of ibid reg 22, 'shared ownership lease' means a lease of a dwelling granted on payment of a premium which is calculated by reference to a percentage of the value of the dwelling or of the cost of providing it, and is not less than 25% of that value or cost: reg 22(1).

18 For the purposes of ibid reg 22, 'long lease' means a lease which is a long tenancy for the purposes of the Housing Act 1985 Pt IV (ss 79–117) (as amended) (see LANDLORD AND TENANT vol 27(2) (Reissue) para 1125 et seq) (secure tenancies and rights of secure tenants): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 22(1).

19 For the purposes of ibid reg 22, 'public body' means a local authority, a new town corporation or an urban development corporation established under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134–172) (as amended) (see TOWN AND COUNTRY PLANNING vol 46 (Reissue) para 1270 et seq): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 22(1).

20 Ie within the meaning given to that expression in the Local Authorities (Companies) Order 1995, SI 1995/849, art 1(4): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 22(3)(b) read with reg 22(2).

21 Ie by virtue of the Superannuation Act 1972: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 23.

22 For the purposes of ibid reg 25(2), 'relevant estimates' means the estimates which the authority makes under the Local Government and Housing Act 1989 s 48(1)(b) (see para 581 ante) for the financial years during which it is to receive any consideration under the contract and the financial year immediately following the last such year: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 25(3).

23 Ibid reg 25(2) read with reg 25(1).

B. LIMITS ON POWER TO ENTER CREDIT ARRANGEMENTS

585. Limits on power. A local authority[1] may not enter into a credit arrangement for any purpose unless, if it incurred expenditure for that purpose, it would be expenditure for capital purposes[2], and references in certain provisions of Part IV of the Local Government and Housing Act 1989[3] to 'capital purposes', in relation to a credit arrangement, must be construed accordingly[4]. A local authority may not enter into a credit arrangement unless, at the time the arrangement comes into being, there is available to the authority an amount of credit cover equal to the initial cost of the arrangement[5]. For these purposes, each of the following amounts constitutes, in relation to a credit arrangement, an amount of credit cover available to a local authority:

(1) an amount for the time being authorised by a credit approval issued to the authority[6];

(2) an amount of the usable part of capital receipts which, in accordance with a determination[7] referring to the arrangement, is applied by the authority as provision to meet credit liabilities[8]; and

(3) an amount which, in accordance with a determination of the authority referring to the arrangement, is set aside from a revenue account[9] by the authority as provision to meet credit liabilities (being an amount over and above what it is required so to set aside by virtue of any other provision of Part IV)[10].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

2 As to expenditure for capital purposes see para 562 ante.

3 Ie the Local Government and Housing Act 1989 ss 51–66: see paras 566–569 ante, 592, 606–617 post.

4 Ibid s 50(1).
5 Ibid s 50(2).
6 Ibid s 50(3)(a).
7 Ie under ibid s 60(2): see para 610 post.
8 Ibid s 50(3)(b).
9 For the meaning of 'revenue account' see para 560 note 3 ante.
10 Local Government and Housing Act 1989 s 50(3)(c). A determination under s 50(3)(c) may not be made later than 30 September in the financial year following that in which falls the time when there comes into being the credit arrangement for which the credit cover is made available: s 50(5). For the meaning of 'financial year' see para 559 note 1 ante.

Except in so far as they are applied by s 52 (see para 583 ante), the provisions of s 50(1)–(5) do not apply in relation to a transitional credit arrangement: s 50(6).

C. CALCULATING THE COST OF CREDIT ARRANGEMENTS

586. Initial cost of leases. The initial cost of a credit arrangement is the amount which an authority has gained by entering the particular arrangement. The subsequent cost (or 'cost at any subsequent time') is the amount which has not yet been repaid.

In relation to a credit arrangement which is a lease[1], the initial cost and the cost of the arrangement at any time is to be calculated in accordance with the following provisions[2]. Where the initial cost of a lease of land does not fall to be determined[3], the initial cost of the lease is the capital cost of the lease[4]. The initial cost of a lease of goods is the capital cost of the lease[5]. In these provisions[6], a reference to the capital cost of a lease is a reference to the amount which, at the time the authority becomes the lessee, the authority estimates will be the aggregate of:

(1) the value of the consideration given, or falling to be given, by it in respect of the lease before or during the financial year in which it becomes the lessee[7]; and
(2) the value of the consideration falling to be given by it in respect of the lease in any subsequent financial year[8].

Where in relation to a relevant lease[9] of land:

(a) the initial cost does not fall to be determined under any of certain regulations[10];
(b) the authority had an earlier leasehold interest ('the preceding interest') in the whole or part of the land[11]; and
(c) the authority acquired the preceding interest on or after 1 April 1990 under a lease of which the initial cost was nil[12],

the initial cost is the aggregate of the capital cost of the relevant lease and the value of the consideration given by the authority in respect of the preceding interest[13].

Where, in relation to a lease of land, the authority becomes the lessee under the provisions of a private finance transaction[14], and the initial cost of that transaction falls to be determined under a certain provision[15], the initial cost[16] is the lesser of:

(i) 70 per cent of the amount which, apart from this provision, would be the initial cost of the lease[17]; and
(ii) the amount which, apart from this provision, would be the initial cost of the lease minus the relevant deduction[18].

Where, in relation to a lease of land, the authority becomes the lessee under the provisions of a private finance transaction, and the initial cost of

that transaction falls to be determined under a certain provision[19], the initial cost[20] is 70 per cent of the amount which, apart from this provision, would be the initial cost of the lease[21].

A local authority which becomes the lessee under a relevant lease[22] may reduce the amount which, apart from this regulation, would be the initial cost of that lease by an amount not exceeding the balance of the released credit cover in relation to an old lease[23].

In determining the capital cost of a lease[24], the adjusted cost of a lease[25], or the consideration given in respect of an earlier leasehold interest in land[26], a local authority must disregard any consideration given or falling to be given in respect of the lease or, as the case may be, the earlier leasehold interest ('the lease') if it is consideration to which certain provisions apply[27].

1 As to leases see para 580 ante.
2 Ie the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, regs 27–39: see reg 26(2).
3 Ie under any of ibid regs 28–35: see reg 36(1).
4 Ibid reg 36(1).
5 Ibid reg 36(2).
6 Ie in ibid Pt IV (regs 13–51) (as amended), and subject to reg 15 (see the text and notes 24–27 infra): see reg 14(1).
7 Ibid reg 14(1)(a).
8 Ibid reg 14(1)(b). As to the value of the consideration falling to be given in each subsequent financial year see reg 14(2). For the meaning of 'financial year' see para 559 note 1 ante.

For the purposes of reg 14 and the following provisions of Pt IV (as amended), in any case where the consideration in respect of a lease consists, in whole or in part of an undertaking to do or refrain from doing something at a future time (whether specified or not), or a right to do or refrain from doing something at a future time, that consideration must not be regarded as having been given until the undertaking is performed or, as the case may be, the right is exercised: reg 14(3).

9 For the purposes of ibid reg 35, 'relevant lease' means any lease of land other than a lease of a dwelling-house which was, at any time after 31 March 1990 and before 1 April 1997, let or occupied under an excluded tenancy, or has, at any time after 31 March 1997, been used by the authority or any other local authority to provide accommodation in the exercise of their functions under the Housing Act 1996 Pt VII (ss 175–218) (as amended) (homelessness) (see HOUSING vol 22 (Reissue) para 246 et seq): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 35(1). For the purposes of reg 35, 'dwelling-house' has the same meaning as in the Housing Act 1985 Pt IV (ss 79–117) (as amended) (secure tenancies and rights of secure tenants) (see LANDLORD AND TENANT vol 27(2) (Reissue) para 1125 et seq): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 35(1). For the purposes of reg 35, 'excluded tenancy' means a tenancy or licence to occupy a dwelling-house which, for the purposes of the Housing Act 1985 Pt IV (as amended), was excluded from being a secure tenancy by virtue of Sch 1 para 4 (accommodation for homeless persons) or Sch 1 para 6 (short term arrangements) (see LANDLORD AND TENANT vol 27(2) (Reissue) paras 1131, 1133): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 35(1).
10 Ie ibid regs 28–34: see reg 35(2)(a).
11 Ibid reg 35(2)(b).
12 Ie by virtue of the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, or the Local Authorities (Capital Finance) Regulations 1990, SI 1990/432 (revoked): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 35(2)(c).
13 Ibid reg 35(2).
14 As to private finance transactions see para 582 ante.
15 Ie under the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 41 (as amended): see para 590 post.
16 Ie if it is not nil by virtue of any other provision of ibid Pt IV (as amended): see para 587 post.
17 Ibid reg 37(1)(a).
18 Ibid reg 37(1)(b). For the purposes of reg 37(1)(b), the relevant deduction is the amount, if any, by which amount A exceeds amount B where 'amount A' means the amount of the

relevant deduction determined under reg 41(5) (see para 590 post) for the private finance transaction in question and 'amount B' means the amount which, apart from reg 41 (see para 590 post), would be the initial cost of that transaction: reg 37(2).

19 Ie under ibid reg 42 (as amended): see paras 590–591 post.

20 Ie if it is not nil by virtue of any other provision of ibid Pt IV (as amended): see para 587 post.

21 Ibid reg 37(3).

22 For the purposes of ibid reg 38, a lease is a relevant lease if it is a lease of land and its initial cost falls to be determined under regs 35, 36, 37: reg 38(1)(a).

23 Ibid reg 38(2). For the purposes of reg 38(2), the balance of the released credit cover in relation to an old lease is an amount determined by the authority by:

(1) estimating, at the relevant time and on the assumptions specified in reg 38(4), the initial cost of a new lease of the land demised by the old lease (reg 38(3)(a)); and

(2) subtracting from that estimate any amount which the authority have already applied out of that estimate in reduction under reg 38(2) of the initial cost of a lease other than the relevant lease concerned (reg 38(3)(b)).

For the purposes of reg 38, 'old lease' means a lease of which the initial cost fell to be determined under regs 35, 36, 37 or under the Local Authorities (Capital Finance) Regulations 1990, SI 1990/432, reg 7(6), (7) or 7A (revoked): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 38(1)(b). For the purposes of reg 38, 'relevant time', in relation to an old lease, means the time when the authority's interest in the lease ceases other than by reason of the expiry of the term of the lease: reg 38(1)(c).

The assumptions specified for the purposes of reg 38(3) are:

(a) that the term of the new lease was equal to the term of the old lease less the expired portion of that term (reg 38(4)(a));

(b) that the initial cost of the new lease would fall to be determined under reg 36 (reg 38(4)(b));

(c) that apart from the term of the new lease, the new lease was identical to the old lease (reg 38(4)(c)); and

(d) that the initial cost of the new lease fell to be calculated at the time when the initial cost of the old lease was calculated (reg 38(4)(d)).

24 Ibid reg 15(1)(a). The text refers to the capital cost of a lease for the purposes of reg 35 or reg 36: see reg 15(1)(a).

25 Ibid reg 15(1)(b).

26 Ibid reg 15(1)(c). The text refers to the consideration given in respect of an earlier leasehold interest in land for the purposes of reg 35 or reg 49 (see para 593 post): see reg 15(1)(c).

27 Ibid reg 15(1). The text refers to consideration to which reg 15(2), reg 15(3) or reg 15(4) applies: reg 15(1).

587. Leases with nil initial cost. A credit arrangement which is a private finance transaction[1] is to be excluded from subsequent cost calculations[2], and the initial cost and the cost at any time of the arrangement are to be nil, if the authority determines that in accordance with proper practices[3] no item, other than an item specified below, is required to be recognised as an asset in any balance sheet it is required to prepare in accordance with such practices for any financial year[4] during the term of the credit arrangement with respect to property which is either provided or made available under the transaction or constructed, enhanced, replaced or installed under the transaction[5].

The following items are specified for the above purposes:

(1) any item relating to a contribution by the authority of an asset to any person with whom it enters into the private finance transaction in return for a reduction in the consideration payable by the authority to that person under the transaction[6]; or

(2) any item relating to an asset to be provided or made available under the private finance transaction by any person which is transferred into the ownership of the authority, whether or not

upon payment of any consideration by the authority, at the end of the contract term relating to the transaction[7].

The following leases are treated as having an initial cost of nil:

(a) leases under certain private finance transactions[8];
(b) a lease of land for a term not exceeding three years[9];
(c) a lease of a dwelling-house for use as accommodation for homeless persons[10];
(d) a lease of land for non-housing purposes[11];
(e) consecutive leases of land for total term not exceeding ten years[12];
(f) a lease reacquired by a local authority[13];
(g) fire authority leases[14]; and
(h) national park authority leases[15].

1 As to private finance transactions see para 582 ante.
2 Ie from the Local Government and Housing Act 1989 s 49(2) (see para 589 post): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 40(1) (substituted by SI 1999/3423; and amended by SI 2001/723).
3 For the meaning of 'proper practices' see para 560 note 3 ante.
4 For the meaning of 'financial year' see para 559 note 1 ante.
5 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 40(1) (as substituted and amended: see note 2 supra).
6 Ibid reg 40(2)(a) (as substituted: see note 2 supra).
7 Ibid reg 40(2)(b) (as substituted: see note 2 supra).
8 See ibid reg 28.
9 See ibid reg 29.
10 See ibid reg 30.
11 See ibid reg 31 (amended by SI 1999/1852).
12 See the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 32.
13 See ibid reg 32A (added by SI 1999/1852). For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
14 See the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 33.
15 See ibid reg 34.

588. Subsequent cost of leases. Where a local authority[1] becomes the lessee under a lease[2], the cost of the lease at any time is to be the amount which would be the capital cost of the lease, if it was entered into at the time in question, on the basis of an estimate made at that time and disregarding any consideration given by the authority in respect of the lease before that time[3].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 Ie of which the initial cost falls to be determined under the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, regs 35, 36 or 37 (see para 586 ante): see reg 39.
3 Ibid reg 39. Subject to reg 46 (see para 593 post), where, by virtue of Pt IV (as amended), the initial cost of a lease is nil, the cost of that lease at any time is also to be nil: reg 27.

589. Initial cost of extended credit contracts. Subject to certain provisions[1], for the purposes of Part IV of the Local Government and Housing Act 1989[2] the initial cost of a credit arrangement is the amount which, at the time the arrangement comes into being, the local authority[3] estimates will be the aggregate of:

(1) any consideration which falls to be given by the authority under the arrangement in the financial year[4] in which it comes into being[5]; and
(2) the value of the consideration falling to be given by the authority under the arrangement in any subsequent financial year[6].

Special provision is made as to the initial cost of a relevant arrangement[7].

Where the consideration under a contract consists, in whole or in part, of an option[8], the estimate required to be made under head (2) above must be made:

(a) on the assumption that the option will be exercised or, if the option could be exercised in different ways, on the assumption that it will be exercised in each of those ways[9]; and

(b) on the assumption that the option will not be exercised[10],

and if, on any of those assumptions, the contract would on those estimates constitute, alone or together with one or more other contracts, a credit arrangement, it is to be regarded as doing so regardless of whether the option is or is not in fact exercised[11].

1 Ie subject to the Local Government and Housing Act 1989 ss 49(3), 52 (see paras 583–584 ante): see s 49(1).
2 Ie ibid Pt IV (ss 39–66) (as amended): see s 49(1).
3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
4 For the meaning of 'financial year' see para 559 note 1 ante.
5 Local Government and Housing Act 1989 s 49(1)(a).
6 Ibid s 49(1)(b). As to the value of the consideration falling to be given in each subsequent financial year see s 49(2). Regulations under s 49(2) are made annually for the forthcoming financial year: see eg the Local Authorities (Capital Finance) (Rate of Discount for 2001/02) (England) Regulations 2001, SI 2001/384; and the Local Authorities (Capital Finance) (Rate of Discount for 2001/2002) (Wales) Regulations 2001, SI 2001/1287.
7 See the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 45(2). For the purposes of reg 45, 'relevant arrangement' means a credit arrangement to which reg 43(2) (arrangement for improving the heating or lighting of a building) or reg 44(2) (arrangement for improving street lighting) applies: reg 45(1).
8 For the purpose of the Local Government and Housing Act 1989 s 48(7), 'option' includes any right which is exercisable or not at the discretion of a party to the contract: s 48(7).
9 Ibid s 48(7)(a).
10 Ibid s 48(7)(b).
11 Ibid s 48(7). In the application of s 49 to a credit arrangement which consists, in whole or in part, of a contract, the consideration of which falls under s 48(7), if the credit arrangement would exist on the basis of any two or more of those assumptions, the authority must for the purposes of s 49 make whichever of those assumptions seems to it most likely: s 49(5)(b).

If, in the case of a credit arrangement falling within s 49(5):

(1) the option in question is exercised in a way different from that which was assumed for the purposes of s 49 (s 51(2)(a)); or

(2) it was assumed for the purposes of s 49 that the option in question would not be exercised but it is in fact exercised (s 51(2)(b)),

the exercise of the option must be regarded for the purposes of s 51 (see para 592 post) as a variation of the terms of the credit arrangement; and if, in such a case, it was assumed for the purposes of s 49 that the option would be exercised (or would be exercised in a particular way) and it subsequently appears to the local authority that it will not in fact be exercised, the option must be assumed to have been abandoned and that abandonment must be regarded for the purposes of s 51 as a variation of the terms of the credit arrangement: s 51(2).

590. **Initial cost of certain private finance transactions.** If the private finance transaction[1] does not meet certain eligibility criteria[2] then the initial cost of the transaction will be calculated in the same manner as for extended credit contracts[3]. If the private finance transaction does meet the relevant eligibility criteria[4] then its initial cost will be calculated as follows.

Subject to a limiting provision[5], the initial cost of a relevant transaction[6] which is not an excluded private finance transaction[7] is to be the lesser of:

(1) 70 per cent of the amount which, apart from this provision, would be the initial cost of the transaction[8]; and

(2) the amount which, apart from this provision, would be the initial cost of the transaction minus the relevant deduction[9].

In any other case[10], and subject to a limiting provision[11], the initial cost of a relevant transaction[12] is to be 70 per cent of the amount which, apart from this provision, would be the initial cost of the credit arrangement[13].

1 As to private finance transactions see para 582 ante.
2 Ie in the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, regs 40–42: see the text and notes 4–13 infra; and para 587 ante.
3 See para 589 ante.
4 Ie if it is a relevant transaction as defined in the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 41(3) (transactions for the replacement or enhancement of a building and provision of heating services) or reg 42(3) (transactions for the provision of a building and heating services).
5 Ie subject to ibid reg 41(7): see reg 41(4). For the purpose of calculating the initial cost or cost at any time of a relevant transaction, the authority must disregard any consideration not in money which has been, or falls to be, given by it in respect of the transaction: reg 41(7).
6 Ie as defined in ibid reg 41(3).
7 Ie a transaction the initial cost of which does not fall to be determined under ibid reg 40 (see para 587 ante): see reg 41(3)(a).
8 Ibid reg 41(4)(a).
9 Ibid reg 41(4)(b). As to the relevant deduction see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 41(5).
10 Ie in relation to a private financial transaction the initial cost of which does not fall to be determined under ibid reg 40 (see para 587 ante) or reg 41: see reg 42(3)(a).
11 Ie subject to ibid reg 42(6): see reg 42(4). For the purpose of calculating the initial cost or cost at any time of a relevant transaction, the authority must disregard any consideration not in money which has been, or falls to be, give by it in respect of the transaction: reg 42(6).
12 Ie as defined in ibid reg 42(3): see the text and note 4 supra.
13 Ibid reg 42(4).

591. Subsequent cost of extended credit contracts and certain private finance transactions. For extended credit contracts[1] and private finance transactions[2] which do not meet certain eligibility criteria[3], subject to certain provisions[4], the cost of a credit arrangement at any time after it has come into being is to be determined in accordance with the provisions relating to the determination of the initial cost[5], but on the basis of an estimate made at the time in question and leaving out of account any consideration which has been given by the authority under the arrangement before that time[6].

1 As to extended credit contracts see para 581 ante.
2 As to private finance transactions see para 582 ante.
3 Ie in the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, regs 40–42: see paras 587, 590 ante.
4 Ie subject to the Local Government and Housing Act 1989 s 49(3) (see para 584 ante), s 51 (see paras 589 ante, 592–593 post), s 52 (see para 583 ante): see s 49(4).
5 Ie in accordance with ibid s 49(1), (2): see para 589 ante.
6 Ibid s 49(4). As to the cost at any time in relation to extended credit contracts which do not meet the required eligibility criteria (ie credit arrangements for heating and lighting improvements to which the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 43(2) or reg 44(2) applies: see reg 45(1); and para 589 ante) see reg 45(3).

As to the cost at any time in relation to private finance transactions which do not meet the required eligibility criteria (ie in relation to transactions the initial cost of which does not fall to be determined under reg 40 (see para 587 ante): see reg 41(3)(a) (buildings and

heating services); and para 590 ante) see reg 41(6). For the purpose of calculating the initial cost or cost at any time of a relevant transaction, the authority must disregard any consideration not in money which has been, or falls to be, given by it in respect of the transaction: reg 41(7).

In all other cases relating to private finance transactions (i e transactions the initial cost of which does not fall to be determined under reg 40 (see para 587 ante) or reg 41 (see para 590 ante): see reg 42(3)(a) (buildings and heating services); and para 590 ante), the cost at any time of a relevant transaction is to be 70 per cent of the amount which, apart from this provision, would be the cost of the transaction at that time: reg 42(5). For the purpose of calculating the initial cost or cost at any time of a relevant transaction, the authority must disregard any consideration not in money which has been, or falls to be, given by it in respect of the transaction: reg 42(6).

D. VARIATION OF CREDIT ARRANGEMENTS

592. General rules on variation. The following provisions[1] apply where the terms of a credit arrangement entered into by a local authority[2] are varied (whether by the making of a new contract or otherwise) in such a way that, if the effect of the variation had been part of the arrangement at the time it came into being, the initial cost would have been greater than it was[3]. Where a credit arrangement is varied as mentioned above, the local authority must secure that there is available to it an amount of credit cover equal to whichever is the less of:

(1) the difference between the total amount of consideration paid and payable under the arrangement, disregarding the variation and the total amount of the consideration paid and payable under the arrangement as varied[4]; and

(2) the difference between the adjusted cost of the arrangement and the credit cover already made available in connection with the arrangement[5].

1 Ie the Local Government and Housing Act 1989 s 51 other than s 51(10): see s 51(1).

2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

3 Local Government and Housing Act 1989 s 51(1). If, at any time after the terms of a credit arrangement have been varied as mentioned in s 51(1), the terms of the arrangement are again varied, s 51(2)–(8) has effect with any necessary modifications and, in particular, as if:

(1) the reference in s 51(1) to the time the arrangement came into being were a reference to the time at which the arrangement was varied (or, as the case may be, last varied) as mentioned in s 51(1) (s 52(9)(a));

(2) the reference in s 51(1) to the initial cost were a reference to the adjusted cost of the arrangement as so varied (or last varied) (s 52(9)(b)); and

(3) the reference in s 51(4)(b) (see the text to note 5 infra) to the credit cover already made available in accordance with s 50 (see para 585 ante) included a reference to any additional credit cover made available under s 50 at the time of an earlier variation (s 52(9)(c)).

If at any time the terms of a credit arrangement are varied otherwise than as mentioned in s 51(1), then, so far as the variation affects the consideration falling to be paid by the local authority in any year, account must be taken of the variation in determining the cost of the arrangement at any subsequent time (under s 51(8) (see para 593 post) or s 49(3) or s 49(4) (see paras 584, 591 ante)) but for other purposes the variation must be disregarded: s 51(10).

4 Ibid s 51(4)(a).

5 Ie in accordance with ibid s 50 (see para 585 ante): see s 51(4)(b). Section 50(3), (5) (see para 585 ante) applies for the purposes of s 51 as it applies for the purposes of s 50, except that, in s 50(5), the reference to the time when the arrangement comes into being must be construed as a reference to the time when it is varied: s 51(4). As to the adjusted cost see para 593 post.

593. Cost at or following variation. Where a credit arrangement is varied[1], the cost of the arrangement at any time after the variation must be determined in accordance with the following provisions (in like manner as the determination of the adjusted cost) but on the basis of an estimate made at the time in question and leaving out of account any consideration which has been given by the authority under the arrangement before that time[2].

The adjusted cost of the arrangement[3] is the aggregate of:

(1) the consideration which, in the financial year[4] in which the arrangement is varied and in any earlier financial year, has been or falls to be given by the local authority[5]; and

(2) the amount which, at the time of the variation, the authority estimates will be the cost of the arrangement, as varied, in each subsequent financial year determined as follows[6].

Where a credit arrangement which is excluded from the statutory formula[7] is varied[8], the adjusted cost and the cost of the arrangement at any time after the variation must be determined in accordance with the following provisions[9].

Subject to a certain provision[10], the adjusted cost of a credit arrangement which is excluded from the statutory formula[11], other than a credit arrangement falling within the following provisions[12], is to be the amount which, at the time the arrangement is varied, the authority estimates will be the aggregate of the value of the consideration given by it in respect of the arrangement before or during the financial year in which the arrangement is varied, and the value of the consideration falling to be given by it in respect of the arrangement, as varied, in any subsequent financial year[13].

Where a credit arrangement which is a lease of land ('the arrangement') is varied by the grant to the authority of a new lease of the same land for a term which extends beyond the expiry date of the arrangement, and if the new lease were granted upon the expiry of the arrangement, the initial cost of the new lease would fall to be determined under certain provisions[14], the adjusted cost of the arrangement is to be nil[15].

Where a local authority agrees to a variation of a credit arrangement which is a relevant lease[16], the adjusted cost of the lease is the aggregate of the amount which, apart from this provision, would be the adjusted cost[17] and the value of the consideration given by the authority in respect of the preceding interest[18].

Where a local authority agrees to a variation of a credit arrangement[19], the cost of the arrangement at any time after the variation is the amount which would[20] be the adjusted cost of the arrangement if the variation was made at the time in question, on the basis of an estimate made at that time and disregarding any consideration given by the authority in respect of the arrangement before that time[21].

1 Ie as mentioned in the Local Government and Housing Act 1989 s 51(1): see para 592 ante.

2 Ibid s 51(8).

3 Ie referred to in ibid s 51(4)(b) (see para 592 ante): see s 51(5).

4 For the meaning of 'financial year' see para 559 note 1 ante.

5 Local Government and Housing Act 1989 s 51(5)(a). For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

6 Ibid s 51(5)(b). As to the cost of the arrangement as varied for any subsequent financial year see s 51(6).

The provisions of s 51(5), (6) are subject to s 51(7), which provides that s 51(5) and s 51(6) do not apply in relation to a credit arrangement as to which the method of

calculating the initial cost and the cost at any time is provided for by regulations under s 49(3) (see para 584 ante); and any adjusted cost or cost which would otherwise fall to be determined in accordance with s 51(5) or s 51(6) must be determined in accordance with provisions made by the regulations: s 51(7).

7 Ie excluded from ibid s 49(2): see para 589 ante.

8 Ie as mentioned in ibid s 51(1): see para 592 ante.

9 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 46. The text refers to determination in accordance with regs 47–51: reg 46.

10 Ie subject to ibid reg 15: see para 586 ante.

11 Ie excluded from the Local Government and Housing Act 1989 s 49(2): see para 589 ante.

12 Ie within the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, regs 48, 49, 50.

13 Ibid reg 47(1). As to the value of the consideration falling to be given in each subsequent financial year see regs 14(2), 47(2); and para 586 ante.

14 Ie under ibid reg 29, reg 30 or reg 32: see para 587 ante.

15 Ibid reg 48.

16 For the purposes of ibid reg 49, 'relevant lease' means a lease of which the initial cost was determined under the Local Authorities (Capital Finance) Regulations 1990, SI 1990/432, reg 35 or reg 7(6) (revoked): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 49(1).

17 Ie by virtue of ibid reg 47: see reg 49(2)(a).

18 Ibid reg 49(2)(b). For the purposes of reg 49, 'preceding interest', in relation to a relevant lease, means the earlier leasehold interest mentioned in the Local Authorities (Capital Finance) Regulations 1990, SI 1990/432, reg 35(2) (revoked) or, as the case may be, reg 7(6)(b) (revoked): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 49(1).

Where a credit arrangement which is a relevant lease is varied by the continuation of the tenancy by virtue of the Landlord and Tenant Act 1954 s 24 (as amended) (continuation of tenancies to which Pt II (ss 23–46) (as amended) (see LANDLORD AND TENANT vol 27(2) (Reissue) para 558 et seq) applies and grant of new tenancies), the adjusted cost of the lease is to be an amount determined for the lease under the Local Authorities (Capital Finance) Regulations 1990, SI 1990/432, reg 47 (revoked), or, where the initial cost of the lease was determined under reg 35 (revoked) or reg 7(6) (revoked), under reg 49 (revoked): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 50(2). For the purposes of reg 50, 'relevant lease' means a lease which creates a tenancy to which the Landlord and Tenant Act 1954 Pt II (security for business and professional tenants) applies: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 50(1).

19 Ie which is excluded from the Local Government and Housing Act 1989 s 49(2) (see para 589 ante): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 51.

20 Ie in accordance with ibid reg 47: see reg 51.

21 Ibid reg 51.

(v) Borrowing

A. IN GENERAL

594. Power to borrow. As part of the proper management of its affairs, a local authority[1] may borrow[2] money for any purpose relevant to its functions under any enactment[3]. In so far as any local authority has power under any private or local Act to borrow money (whether for general or specific purposes), any such power ceases to have effect for financial years[4] beginning on or after 1 April 1990[5].

Borrowing money[6] is included within the general powers of a local authority to do any thing which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions[7]. However, this power to borrow is not to be exercised except in accordance with the enactments relating to it[8].

A person lending money to a local authority is not bound to inquire whether the authority has power to borrow the money and is not prejudiced by the absence of any such power[9].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 As to borrowing by a local authority see para 561 note 10 ante.
3 Local Government and Housing Act 1989 s 43(1), which is expressed to be subject to ss 44–66 (as amended).
4 For the meaning of 'financial year' see para 559 note 1 ante.
5 Local Government and Housing Act 1989 s 43(7). Subject to s 43(7), the provisions of s 43(2)–(6) (see para 595 post) apply to all borrowing powers for the time being available to a local authority under any enactment, whenever passed: s 43(8).
6 Borrowing without statutory authority by a corporation is ultra vires and may be restrained by injunction (see *A-G v Oldham Corpn* [1936] 2 All ER 1022), but power to borrow might be inferred where borrowing is necessary in order to execute statutory powers (see *Baroness Wenlock v River Dee* Co (1883) 36 ChD 675n at 677n, CA, per Lord Esher MR). As to the borrowing powers of corporations, see generally CORPORATIONS. The doubts as to such matters in the case of local authorities have been removed by the Local Government Act 1972.
7 See the Local Government Act 1972 s 111(1); and para 518 ante.
8 See ibid s 111(3); and para 518 ante.
9 Local Government and Housing Act 1989 s 44(6).

595. **Means of borrowing.** Except with the approval of the Secretary of State[1] given with the consent of the Treasury, a local authority[2] may not borrow money in any manner other than:

(1) by overdraft or short term[3] from the Bank of England or from a body or partnership which, at the time the borrowing is undertaken, is an authorised institution within the meaning of the Banking Act 1987[4];
(2) from the National Debt Commissioners or from the Public Works Loan Commissioners[5]; or
(3) by means of a loan instrument[6].

In the exercise of the powers conferred by heads (1) to (3) above, a local authority may not, without the consent of the Treasury, borrow from a lender outside the United Kingdom or otherwise than in sterling[7].

Any approval so given by the Secretary of State and any consent so given by the Treasury may be given generally or in a particular case or to authorities of a particular description or by reference to borrowing or securities of a particular description and may be given subject to conditions[8].

With the consent of the Treasury, the Secretary of State may make regulations:

(a) regulating the terms of loan instruments and the manner of their issue, transfer or redemption[9];
(b) restricting the issue of instruments which are transferable by delivery[10];
(c) regulating the manner in which any payments or repayments are to be made to the holder of the instrument[11]; and
(d) making provision for the custody and, where appropriate, eventual destruction of documents relating to loan instruments[12].

1 As to the Secretary of State see para 106 ante. The functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. In relation to Wales, the Treasury consent requirements under

the Local Government and Housing Act 1989 s 43(2), (5), (6) continue in effect: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and para 107 ante.

2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.

3 For the purposes of the Local Government and Housing Act 1989 s 43(2)(a), borrowing 'short term' must be construed in accordance with s 45(6) (see para 599 post): see s 43(2).

4 Ibid s 43(2)(a). For the meaning of 'authorised institution' see the Banking Act 1987 s 106(1); and BANKING vol 3(1) (Reissue) para 17. The reference in the Local Government and Housing Act 1989 s 43(2) to an authorised institution within the meaning of the Banking Act 1987 is modified by the Banking Coordination (Second Council Directive) Regulations 1992, SI 1992/3218, reg 82(1), Sch 10 para 30.

5 Local Government and Housing Act 1989 s 43(2)(b). As to the National Debt Commissioners see MONEY vol 32 (Reissue) paras 173–174. As to the Public Works Loan Commissioners see MONEY vol 32 (Reissue) para 153 et seq.

6 Ibid s 43(2)(c). As to loan instruments see para 597 post.

7 Ibid s 43(3).

8 Ibid s 43(6).

9 Ibid s 43(5)(a).

10 Ibid s 43(5)(b).

11 Ibid s 43(5)(c).

12 Ibid s 43(5)(d). Any document which, at the time it comes into being, does not comply with any provision then made under heads (a), (b) and (c) in the text is not a loan instrument for the purposes of Pt IV (ss 39–66) (as amended): s 43(5).

596. Security for borrowings. All money borrowed by a local authority[1] (whether before or after 16 January 1990[2]), together with any interest thereon, must be charged indifferently on all the revenues of the authority[3]. All securities created by a local authority must rank equally without any priority[4], but this does not affect any priority existing at, or any right to priority conferred by a security created before, 1 June 1934[5]. If at any time any principal or interest due in respect of any borrowing by a local authority remains unpaid for a period of two months after demand in writing, then the person entitled to the sum due may, without prejudice to any other remedy, apply to any court having jurisdiction in respect of a claim for that sum for the appointment of a receiver; and, if it thinks fit, the court may appoint a receiver on such terms and with such powers as the court thinks fit[6]. However, no such application may be made unless the sum due in respect of the borrowing concerned amounts to not less than £5,000 or such other amount as may from time to time be prescribed for these purposes by regulations made by the Secretary of State[7]. The court to whom such an application is made may confer upon the receiver any such powers of collecting, receiving and recovering the revenues of the local authority and of issuing levies and precepts and setting, collecting and recovering community charges as are possessed by the local authority[8].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante. As to borrowing by a local authority see para 561 note 10 ante.

2 Ie the date the Local Government and Housing Act 1989 s 47 came into force: see the Local Government and Housing Act 1989 (Commencement No 3) Order 1989, SI 1989/2445.

3 Local Government and Housing Act 1989 s 47(1).

4 Ibid s 47(2).

5 Ibid s 47(3).

6 Ibid s 47(4).

7 Ibid s 47(5). As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
8 Ibid s 47(6).

597. Loan instruments. Subject to any provision made by regulations[1], for the purposes of Part IV of the Local Government and Housing Act 1989[2], a loan instrument is any document which, directly or by reference to any other document:

(1) contains an acknowledgment (by the borrower, the lender or both) that a loan has been made to the local authority[3] concerned or that, in connection with the provision of funds to the authority, a payment or repayment is due from the authority[4];
(2) states the dates on which the authority is to make payments or repayments[5];
(3) states the amount of each of those payments or repayments or the method by which that amount is to be calculated[6];
(4) specifies the means, if any, by which the rights or obligations under the instrument are transferable[7];
(5) except in the case of an instrument which is transferable by delivery, specifies the name or description of the person to whom payments or repayments are due[8]; and
(6) in the case of an instrument issued by two or more local authorities acting jointly, states what proportion of the payments or repayments due are the responsibility of each of the authorities concerned[9].

The terms of a loan instrument[10] must comply with the following provisions[11].

The total of the payments[12] which fall to be made by a local authority under the instrument, other than payments in respect of interest, may not, on the date on which the instrument is issued, exceed the amount of money borrowed by the authority under the instrument by more than 15 per cent of the amount borrowed or, if less, the product of 0.5 per cent of the amount borrowed multiplied by the number of relevant years[13].

Where a payment under the instrument in respect of interest is required to be made by a local authority in respect of any period, the payment must be required to be made on a date (which may be specified in the instrument or not) within the period for which the interest is payable and, if the period is a period of more than 12 months, within 12 months of the beginning of the period[14].

Where payments under the instrument at any time fall to be made by a local authority to two or more persons in respect of the same liability, they are required to be treated as jointly entitled to those payments[15].

Any payments under the instrument in respect of principal are to be required to be made by the local authority in question upon dates specified in the instrument[16] or, if the holder of the instrument and the authority agree to defer such payments, upon the dates agreed[17].

The authority or, as the case may be, the registrar[18] must not be required to make any payment by way of additional interest:

(a) because payment of any amount in respect of principal is not duly made as a result of the holder of the instrument not complying with any requirement imposed[19]; or
(b) in a case where such a request[20] has been made, if a payment has

not been duly made but the authority or the registrar have taken all reasonable steps to make that payment on or before the date on which it falls due in accordance with the request[21].

After redemption of the instrument no payments must be due under the instrument to the holder of the instrument in respect of any other loan, or the provision of any other funds, to a local authority[22].

Where the instrument is issued in respect of a loan:

(i) if the right under the instrument to receive payments in respect of the loan is transferred, the person whose particulars were entered in the register before the transfer as the person to whom the payments are due must continue to be entitled to any such payments until particulars of the transferee are entered in the register[23]; and

(ii) if the register is closed or the balance for interest is struck in respect of the loan, the person whose particulars are entered in the register on the date on which the register is closed or the balance is struck as the person to whom payments are due in relation to the loan must be entitled to any such payments falling to be made in the period during which the register is closed or in respect of the interest the balance for which is being struck[24].

1 Ie under the Local Government and Housing Act 1989 s 43(5) (see para 595 ante): see s 43(4).
2 Ie ibid Pt IV (ss 39–66) (as amended): see s 43(4).
3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
4 Local Government and Housing Act 1989 s 43(4)(a).
5 Ibid s 43(4)(b).
6 Ibid s 43(4)(c).
7 Ibid s 43(4)(d).
8 Ibid s 43(4)(e).
9 Ibid s 43(4)(f).
10 'Loan instrument', except in the Local Authorities (Borrowing) Regulations 1990, SI 1990/767, regs 3(5), (6), 6, 7, does not include instruments which are transferable by delivery: reg 2.
11 Ibid reg 3(1).
12 'Payment' includes repayment: ibid reg 2.
13 Ibid reg 3(2). For the purposes of reg 3(2), the 'number of relevant years' means the number of complete periods of 12 months in the period beginning on the date on which the instrument is issued and ending on the last date by which all payments by the authority under the instrument fall to be made: reg 3(2).
14 Ibid reg 3(3).
15 Ibid reg 3(4).
16 Ibid reg 3(5)(a).
17 Ibid reg 3(5)(b). Where payments fall to be made as mentioned in reg 3(5)(b), the payment of interest in respect of the period of deferment is to be required to be made on a date or dates which accord with reg 3(3)(a), (b): reg 3(5), proviso.
18 'The registrar' means a local authority acting as a registrar for some or all of the purposes of the register maintained by that authority or any person appointed by the authority as a registrar for any such purposes who is neither an officer nor any other employee of the authority: ibid reg 2. 'The register' includes a register maintained by the local authority under the Local Government and Housing Act 1989 s 46 (see para 598 post): Local Authorities (Borrowing) Regulations 1990, SI 1990/767, reg 2.
19 Ie under ibid reg 8(2): see reg 3(6)(a).
20 Ie as is mentioned in ibid reg 8(4): see reg 3(6)(b).
21 Ibid reg 3(6)(b).
22 Ibid reg 3(7).
23 Ibid reg 3(8)(a).
24 Ibid reg 3(8)(b).

598. Register of loan instruments. Every local authority[1] must maintain a register giving particulars of all the loans in respect of which loan instruments[2] are issued by or to the authority on or after 1 April 1990 and, if it thinks it appropriate, a local authority may appoint as a registrar for some or all of the purposes of such a register a person who is neither an officer nor any other employee of the authority[3]. In this register the authority must, not later than 30 September 1990, enter particulars of all outstanding loans[4] in respect of which any payment or repayment falls to be made by the authority (whether or not any loan instruments have been issued) other than those resulting from borrowing[5]. Subject to the following provisions, a register required to be so maintained must be in such form as the authority concerned considers appropriate; but that form must be such that the register is, or is capable of being reproduced, in legible form[6]. A register so maintained must contain, with respect to each loan of which particulars are required to be registered:

(1) except in the case of a loan in respect of which there has been issued an instrument (whether or not being a loan instrument) transferable by delivery, the name or description, and the address, of the person to whom payments or repayments are due[7];

(2) the dates on which the payments or repayments are to be made[8]; and

(3) the amount of each of those payments or repayments or the method by which that amount is to be calculated[9].

A local authority may remove from a register so maintained particulars of any loan in respect of which no more payments or repayments fall to be made[10]. With the consent of the Treasury, the Secretary of State[11] may make regulations:

(a) generally with respect to the keeping of a register required to be so maintained[12];

(b) modifying all or any of the particulars specified in heads (1) to (3) above[13]; and

(c) specifying additional particulars which are to be entered in a register so maintained[14].

A copy of an entry in a register so maintained which is certified by a registrar of the register and purports to show particulars entered with respect to loans[15] is prima facie evidence of the matters specified in the entry[16]. A certification by a registrar of a register so maintained of any instrument of transfer of a loan instrument is to be taken as a representation by him to any person acting on the faith of the certification that there have been produced to the registrar such documents as on their face show a prima facie title to the loan instrument in the transferor named in the instrument of transfer; but such a certification is not to be taken as a representation that the transferor has any title to the loan instrument[17]. If the name of any person is, without sufficient cause, entered in or omitted from a register so maintained, or default is made or unnecessary delay takes place in making any entry required to be made in such a register, the person aggrieved may apply to the High Court or a county court for rectification of the register[18]. Where an application for certification of the register is made, the court:

(i) may refuse the application or order rectification of the register[19];

(ii) may decide any question relating to the title of a person who is a party to the application to have his name entered in or omitted from the register[20]; and

(iii) generally may decide any question necessary or expedient to be decided for rectification of the register[21].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 As to loan instruments see para 597 ante.
3 Local Government and Housing Act 1989 s 46(1).
4 For the purpose of ibid s 46(2), an 'outstanding loan' is one which was made before 1 April 1990 and in respect of which any payment or repayment falls to be made on or after that date: see s 46(2).
5 Ie as mentioned in ibid s 43(2)(a) or (b) (see para 595 ante): see s 46(2). As to borrowing by a local authority see para 561 note 10 ante.
6 Ibid s 46(3).
7 Ibid s 46(4)(a).
8 Ibid s 46(4)(b).
9 Ibid s 46(4)(c).
10 Ibid s 46(5).
11 As to the Secretary of State see para 106 ante. The functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. In relation to Wales, the Treasury consent requirements under the Local Government and Housing Act 1989 s 46(6) continue in effect: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and para 107 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512–517.
12 Local Government and Housing Act 1989 s 46(6)(a).
13 Ibid s 46(6)(b).
14 Ibid s 46(6)(c).
15 Ie particulars entered pursuant to ibid s 46(4) or (6): see the text and notes 7–14 supra.
16 Ibid s 46(7).
17 Ibid s 46(8).
18 Ibid s 46(9).
19 Ibid s 46(10)(a).
20 Ibid s 46(10)(b).
21 Ibid s 46(10)(c).

599. Short term borrowing. Local authorities[1] can undertake short term borrowing through the mechanism of the aggregate credit limit[2]. The aim of this is to allow authorities to borrow in the short term to cover outstanding revenue receipts such as housing rent. No credit approval is needed for such temporary borrowing[3].

For each financial year[4] every local authority must determine an amount of money ('the short-term borrowing limit'[5]), being a part of the overall borrowing limit, which is for the time being the maximum amount which the authority may have outstanding by way of short term borrowing[6].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 For the meaning of 'aggregate credit limit' see para 571 ante.
3 See the Local Government and Housing Act 1989 s 62(3), (4); and para 571 ante.
4 For the meaning of 'financial year' see para 559 note 1 ante.
5 For the purposes of the Local Government and Housing Act 1989 s 45(1)(b), a local authority borrows money short term if the sum borrowed is repayable without notice (s 45(6)(a)), or at less than 12 months' notice (s 45(6)(b)), or within 12 months of the date of the borrowing (s 45(6)(c)).
6 Ibid s 45(1)(b). As to borrowing by a local authority see para 561 note 10 ante.

B. LIMITS ON BORROWING

600. Aggregate credit limit. A local authority[1] may not at any time borrow[2] an amount which would cause the total of: (1) the amount outstanding at that time by way of principal of money borrowed by the authority[3]; and (2) the aggregate cost at that time of the credit arrangements entered into by the authority, other than arrangements excluded by regulations[4], to exceed the aggregate credit limit[5] for the time being applicable to the authority[6].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 References in the Local Government and Housing Act 1989 ss 44, 45–47 (see paras 596, 598 ante, 601 post) to borrowing by an authority are references to borrowing not only under s 43 (see para 595 ante) but also under any other power for the time being available to the authority under any enactment, whenever passed: s 44(4). As to borrowing by a local authority see para 561 note 10 ante.
3 Ibid s 44(1)(a).
4 Ie under ibid Sch 3 para 11 (see para 572 ante): see s 44(1)(b).
5 For the meaning of 'aggregate credit limit' see para 571 ante.
6 Local Government and Housing Act 1989 s 44(1). The text refers to the aggregate credit limit for the time being applicable to the authority by virtue of s 62: see para 571 ante. For the purposes of s 44(1), the temporary use by a local authority for a purpose other than that of the fund in question of money forming part of such a superannuation fund or trust fund as is referred to in s 42(2)(h) or s 42(2)(i) (see para 561 ante) must be treated as borrowing: s 44(5).

601. Authority's own limit. A local authority[1] may not borrow[2] any amount which would cause any limit for the time being determined by the authority[3] to be exceeded[4].

For the purposes of Part IV of the Local Government and Housing Act 1989[5], for each financial year[6] every local authority must determine:

(1) an amount of money ('the overall borrowing limit') which is for the time being the maximum amount which the authority may have outstanding by way of borrowing[7];
(2) an amount of money ('the short term borrowing limit'[8]), being a part of the overall borrowing limit, which is for the time being the maximum amount which the authority may have outstanding by way of short term borrowing[9]; and
(3) a limit on the proportion of the total amount of interest payable by the authority which is at a rate or rates which can be varied by the person to whom it is payable or which vary by reference to any external factors[10].

The duty to determine the limits referred to above must be performed before the beginning of the financial year to which the limits are to relate[11]. However, where a local authority has so determined a limit for a financial year, the authority may at any time (whether before or after the beginning of that year) vary that limit by making a new determination[12].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 As to borrowing by a local authority see para 561 note 10 ante.
3 Ie under the Local Government and Housing Act 1989 s 45: see the text and notes 5–12 infra.
4 Ibid s 44(3). References in ss 44, 45–47 (see paras 596, 598 ante) to borrowing by an authority are references to borrowing not only under s 43 (see paras 594–595 ante) but also under any other power for the time being available to the authority under any enactment, whenever passed: s 44(4).

5 Ie ibid Pt IV (ss 39–66) (as amended): see s 45(1).
6 For the meaning of 'financial year' see para 559 note 1 ante.
7 Local Government and Housing Act 1989 s 45(1)(a).
8 As to short term borrowing see para 599 ante.
9 Local Government and Housing Act 1989 s 45(1)(b).
10 Ibid s 45(1)(c).
11 Ibid s 45(2).
12 Ibid s 45(3). The Local Government Act 1972 s 101 (as amended) (arrangements for discharge of functions of local authorities by committees, officers etc) (see para 295 ante) does not apply to the duty to make a determination under the Local Government and Housing Act 1989 s 45(1) of any limit or to the power to vary a limit under s 45(3): s 45(4).

602. Further provision by the Secretary of State. The Secretary of State[1] may by regulations make provision, in the interests of prudent financial management, regulating borrowing by local authorities[2]. A local authority may not borrow to any extent or in any manner which would contravene any provision of the regulations[3].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
2 Local Government and Housing Act 1989 s 44(2). At the date at which this volume states the law no such regulations had been made pursuant to s 44(2). For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante. As to borrowing by a local authority see para 561 note 10 ante.
3 Ibid s 44(2).

603. Powers of debt management. For each financial year[1] every local authority[2] must determine a limit on the proportion of the total amount of interest payable by the authority which is at a rate or rates which can be varied by the person to whom it is payable or which vary by reference to any external factors[3].

A local authority's powers of debt management are limited to considering entering into prudent and lawful transactions for the purposes of managing its debt; an interest rate swap transaction is not such a transaction[4].

1 For the meaning of 'financial year' see para 559 note 1 ante.
2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
3 Local Government and Housing Act 1989 s 45(1)(c).
4 *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1 at 34, [1991] 1 All ER 545 at 559, HL, per Lord Templeman. This case was decided under the Local Government Act 1972 s 172, Sch 13 (both as amended). The same result should be achieved under the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended).

C. BORROWING BY PARISH AND COMMUNITY COUNCILS

604. Powers to borrow. The following provisions relating to borrowing[1] have been largely repealed[2] but it seems that they continue to have effect in relation to parish and community councils[3].

A parish or community council may borrow money for the purpose of lending to another authority[4], and for any other purpose or class of purposes approved for purposes of this provision by the Secretary of State[5] and in accordance with any conditions subject to which the approval is given[6].

Parish and community councils have certain statutory powers to borrow without the approval of the Secretary of State, for example for temporary borrowing in advance of receipt of revenues, or in advance of receipt of authorised loans[7], and for borrowing for limited periods to pay the interest on certain types of capital expenditure loans[8]. There is power for parish and community councils to borrow further sums during the period permitted for borrowing to enable them to repay the earlier loan[9].

A person lending money to a parish or community council is not bound to inquire whether the borrowing is legal or regular or whether the money raised was properly applied, and is not prejudiced by any illegality or irregularity, or by the misapplication or non-application of any of the money borrowed[10].

1 Ie the Local Government Act 1972 s 172, Sch 13 Pt I: see the text and notes 4–10 infra.
2 See the Local Government and Housing Act 1989 s 194, Sch 12 Pt I.
3 See further para 554 note 3 ante. As to parish councils see para 30 et seq ante; and as to community councils see para 46 et seq ante.
4 Local Government Act 1972 Sch 13 para 1(a) (amended by the Water Act 1989 s 190, Sch 25 para 43).
5 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
6 Local Government Act 1972 Sch 13 para 1(b) (amended by the Local Government Act 1985 s 102, Sch 17). The borrowing purpose approvals issued in accordance with the Local Government Act 1972 Sch 13 para 1(b) (as amended) distinguished between capital expenditure through key sector, subsidiary and locally determined schemes: see the Department of the Environment Circular 66/76, and the Welsh Office Circular 89/76.
7 See the Local Government Act 1972 Sch 13 para 10(1).
8 See ibid Sch 13 para 9(5).
9 See ibid Sch 13 para 8.
10 Ibid Sch 13 para 20.

(vi) Capital Receipts

A. IN GENERAL

605. Introduction. The designation of a sum of money as a capital receipt will impact on the use the local authority[1] can make of the money. The local authority may be required to set aside a proportion of the capital receipt as a provision for future liabilities[2]. There are strict controls on the use that can be made of the part of the money reserved for future credit liabilities.

In practice the designation of money as a capital receipt is less relevant today than when the Local Government and Housing 1989 Act was first enacted. The Local Authorities (Capital Finance) Regulations 1997[3] have been amended[4] to reduce the proportion of funds required to be set aside to nil per cent for most capital receipts. This has effectively removed the requirement that funds be set aside or reserved. However, there are still some areas which have set aside requirements for capital receipts, particularly in relation to the disposal of housing land.

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 Ie liabilities arising under the Local Government and Housing Act 1989 s 59: see paras 611–612 post.
3 Ie the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319.

4 Ie by the Local Authorities (Capital Finance) (Amendment No 3) Regulations 1998, SI 1998/1937.

606. Capital receipts under the Local Government and Housing Act 1989. For the purposes of Part IV of the Local Government and Housing Act 1989[1], the capital receipts of a local authority[2] are, subject to the following provisions, those sums received by the authority in respect of:

(1) the disposal of any interest in an asset if, at the time of disposal, expenditure on the acquisition of the asset would be expenditure for capital purposes[3];

(2) the disposal of any investment other than an investment which, at the time of disposal, is an approved investment[4];

(3) the repayment of, or a payment in respect of, any grants or other financial assistance of such a description that, if the expenditure on the grant or assistance had been incurred at the time of the repayment or payment, it would have constituted expenditure for capital purposes[5]; or

(4) the repayment of the principal of an advance (not being an approved investment) made by the authority for such a purpose that, if the advance had been made at the time of the repayment, expenditure incurred on it would have constituted expenditure for capital purposes[6];

and those sums become capital receipts at the time they are in fact received[7].

In the case of a disposal of an asset which consists of the grant, assignment or surrender of a leasehold interest in any land or the lease of any other asset, only the following are capital receipts:

(a) any premium paid on the grant or assignment[8];

(b) any consideration received in respect of the surrender[9];

(c) any sum paid by way of rent more than three months before the beginning of the rental period to which it relates[10];

(d) any sum paid by way of rent in respect of a rental period which exceeds one year[11]; and

(e) so much of any other sum paid by way of rent as, in accordance with directions given by the Secretary of State[12], falls to be treated as a capital receipt[13].

If the Secretary of State by regulations so provides, the whole or such part as may be determined under the regulations of a sum received by a local authority and which otherwise would not be a capital receipt is to be such a receipt[14], and the whole or such part as may be so determined of a sum which otherwise would be a capital receipt is not to be such a receipt[15].

To the extent that any sums which were received by a local authority before 1 April 1990 and either:

(i) constituted capital receipts for the purposes of Part VIII of the Local Government, Planning and Land Act 1980[16]; or

(ii) did not constitute such receipts by virtue of regulations under that Act[17] but are specified for these purposes by regulations made by the Secretary of State[18],

are represented in the authority's accounts for the financial year[19] ending immediately before that date either by amounts shown as capital receipts which are unapplied as at the end of that year or by amounts included in the balance as at the end of that year of any fund established by the authority[20], those sums must be treated for the purposes of Part IV of the Local

Government and Housing Act 1989 as capital receipts received by the authority on that date[21]. So far as may be necessary for the purposes of Part IV, a local authority must identify which (if any) sums falling within heads (i) and (ii) above are represented by amounts included as mentioned in the above provision in the balance of a fund established as so mentioned[22].

1 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended): see s 58(1).
2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
3 Local Government and Housing Act 1989 s 58(1)(a); and see note 7 infra. As to expenditure for capital purposes see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, Pt II (regs 2–10) (as amended); and para 562 ante.
4 Local Government and Housing Act 1989 s 58(1)(b); and see note 7 infra. For the meaning of 'approved investments' see para 561 note 14 ante.
5 Ibid s 58(1)(c). See further para 608 post.
6 Ibid s 58(1)(d).
7 Ibid s 58(1). Section 58(1) applies to sums received on or after 1 April 1990 but regardless of when the disposal or advance was made or the grant or other financial assistance was given and, in particular, whether or not it was made or given on or after that date but, in the case of a disposal made before that date, the reference in head (1) in the text or, as the case may be, head (2) in the text to the time of the disposal must be construed as a reference to 1 April 1990: s 58(3).
8 Ibid s 58(8)(a).
9 Ibid s 58(8)(b).
10 Ibid s 58(8)(c).
11 Ibid s 58(8)(d).
12 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
13 Local Government and Housing Act 1989 s 58(8)(e).
14 Ibid s 58(9)(a).
15 Ibid s 58(9)(b).
16 See ibid s 58(4)(a). See further the Local Government, Planning and Land Act 1980 Pt VIII (ss 71–85) (repealed).
17 Ie under the ibid s 75(5) (repealed).
18 Local Government and Housing Act 1989 s 58(4)(b).
19 For the meaning of 'financial year' see para 559 note 1 ante.
20 Ie under the Local Government Act 1972 s 172, Sch 13 para 16 (see para 556 ante): see the Local Government and Housing Act 1989 s 58(4).
21 Ibid s 58(4). Any reference in Pt IV (as amended) to '1980 Act receipts' is a reference to sums which are capital receipts by virtue of the Local Government and Housing Act 1989 s 58(4): s 58(4). Section 58(4) does not apply to a sum in respect of which an amount shown as an unapplied capital receipt or included in a balance as mentioned in s 58(4) is, on 1 April 1990, held in an investment which is not on that date an approved investment; and, so far as may be necessary for the purposes of Pt IV (as amended), where on that date a local authority holds investments which are not then approved investments, the authority must identify which (if any) of the amounts so shown or included are to be treated as held in such investments: s 58(6).
22 Ibid s 58(5).

607. Capital receipts under the Local Authorities (Capital Finance) Regulations 1997. The Secretary of State[1] has provided[2] for the following further types of capital receipts:

(1) a sum received by a local authority[3] with regard to transfers of property by virtue of an order made under the London Government Act 1963[4];
(2) a sum received by a local authority with regard to transfers of property under the Local Government Act 1972[5];
(3) a sum received by a local authority in respect of a repayment of

principal in relation to money which[6] is deemed to have been borrowed from it by another local authority[7];

(4) a sum received by a local authority as a designated authority which is paid to it by another local authority[8];

(5) a sum received by the metropolitan police authority in respect of a repayment of principal to be made by it in relation to financial liabilities which[9] have been transferred to it[10]; and

(6) a sum received by a local authority in respect of an interim or final payment[11], if it is not a capital receipt[12].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

2 See the Local Government and Housing Act 1989 s 58(9)(a); and para 606 ante.

3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

4 Ie under the London Government Act 1963 s 23(3) (amended) or s 84 (amended) (see LONDON GOVERNMENT) (transfer of land held for housing purposes): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 56.

5 Ie by virtue of an order under the Local Government Act 1972 s 51(2) (repealed), s 58(2) (see para 89 ante) or s 67(4) (see para 90 ante), regulations under s 67(1) (as amended) or s 67(2) (as amended) (see para 90 ante), or an agreement under s 68 (as amended) (see para 91 ante) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 57(a)); or by virtue of an order under the Local Government Act 1972 s 254(1), (2)(a) or s 254(2)(d) (see para 6 ante), or under those provisions as extended by the Water Act 1973 s 34(1), Sch 6 para 5(2)(b) (repealed) (Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 57(b)).

6 Ie by virtue of an order made under the Local Government Act 1985 s 66(1) (as amended) or s 67(3) (discharge of residuary functions): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 58.

7 Ibid reg 58.

8 Ie under the Local Government Changes for England (Payments to Designated Authorities) (Minimum Revenue Provision) Regulations 1995, SI 1995/2895, reg 8(1): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 58A (added by SI 1998/1937).

9 Ie by virtue of a scheme made under the Greater London Authority Act 1999 s 409(2) (see LONDON GOVERNMENT): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 58B (added by SI 2000/1474).

10 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 58B (as added: see note 9 supra).

11 Ie made in accordance with the Housing Act 1985 s 151A (as added), Sch 6A (as added and amended) (redemption of landlord's share) (see LANDLORD AND TENANT vol 27(2) (Reissue) para 1698 et seq): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 59.

12 Ie by virtue of the Local Government and Housing Act 1989 s 58(1)(a) (see para 606 ante): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 59.

608. **Items which are not capital receipts.** The following sums are not capital receipts for the purposes of Part IV of the Local Government and Housing Act 1989[1]:

(1) any leasehold interest not of the type described in the Local Government and Housing Act 1989[2];

(2) any interest payable to a local authority[3] in respect of the whole or any part of the price where an asset or investment[4] is disposed of and the whole or part of the purchase price is not received by the authority at the time of the disposal[5]; and

(3) an approved investment[6] within the meaning of the Local Government and Housing Act 1989[7].

The following sums are also not capital receipts for the purposes of Part IV, namely, sums received by an authority in respect of:

(a) the disposal of an interest in an asset which, at the time of the disposal, is an asset of a superannuation fund which the authority is required to keep by virtue of the Superannuation Act 1972[8];

(b) the disposal of an investment held for the purposes of such a superannuation fund[9]; or

(c) any repayment or payment[10] which is made to such a superannuation fund[11].

The Secretary of State[12] has provided[13] that the following types of receipts are not to be regarded as capital receipts:

(i) a sum received by a local authority if the aggregate of all sums received in respect of the disposal for which the sum is paid does not exceed £6,000[14];

(ii) a sum received by a local authority in respect of the disposal of an investment which, at the time of the disposal, is not an approved investment, if certain conditions are met[15]; and

(iii) a sum received by a local authority if it is paid by a person other than the person to whom the authority gave the grant or other financial assistance in relation to which the sum is paid[16].

1 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (as amended).
2 Ie in ibid s 58(8): see para 606 ante.
3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
4 Ie falling within the Local Government and Housing Act 1989 s 58(1)(a) or s 58(1)(b): see para 606 ante.
5 Ibid s 58(7).
6 For the meaning of 'approved investments' see para 561 note 14 ante.
7 Ie within the meaning of the Local Government and Housing Act 1989 s 58(1)(b): see para 606 ante.
8 Ibid s 58(2)(a).
9 Ibid s 58(2)(b).
10 Ie such as is mentioned in ibid s 58(1)(c) or s 58(1)(d): see para 606 ante.
11 Ibid s 58(2)(c).
12 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
13 See the Local Government and Housing Act 1989 s 58(9)(b); and para 606 ante.
14 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 61.
15 Ibid reg 62.
16 Ibid reg 63.

609. Notional capital receipts. Where:

(1) the whole or part of the consideration received by a local authority[1] on or after 1 April 1990 for a disposal[2] either is not in money or consists of money which, at the request or with the agreement of the local authority concerned, is paid otherwise than to the authority[3]; or

(2) the right of a local authority to receive such a repayment or payment[4] is assigned or waived for a consideration which is received on or after 1 April 1990 and which, in whole or in part, is not in money or which, at the request or with the agreement of the local authority, is paid otherwise than to the authority[5]; or

(3) on a disposal[6], any consideration is received on or after 1 April 1990 and, if it had been in money paid to the authority, it would have been a capital receipt[7],

there must be determined the amount which would have been the capital receipt if the consideration had been wholly in money paid to the local authority[8]; and the amount so determined is referred to as 'the notional capital receipt'[9].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 Ie falling within the Local Government and Housing Act 1989 s 58(1): see para 606 ante.
3 Ibid s 61(1)(a).
4 Ie as is referred to in ibid s 58(1): see para 606 ante.
5 Ibid s 61(1)(b).
6 Ie falling within ibid s 58(8): see para 606 ante.
7 Ibid s 61(1)(c).
8 See *R v Secretary of State for the Environment, ex p Walters; R v Brent London Borough Council v O'Malley* (1997) 30 HLR 328 at 367–368 per Judge LJ (the amount which has to be valued is the total contribution, whether in cash or in kind or in promises).
9 Local Government and Housing Act 1989 s 61(2). From the amount which, apart from s 61(3), would be the notional capital receipt in relation to a disposal, repayment or payment there must be deducted any amount of money that was paid or is payable to the local authority in respect of that disposal, repayment or payment and in respect of which s 59 (see paras 611–612 post) actually applies or will actually apply when the payment is received: s 61(3).

610. Usable balance of capital receipts. The balance of any capital receipts received by a local authority[1] after deducting the reserved part[2] of each such receipt[3], and any sum which[4] falls to be deducted in determining the amount of any receipt[5] (referred to in Part IV of the Local Government and Housing Act 1989[6] as 'the usable part' of the authority's capital receipts) must be applied by the local authority, according as it determines, in one of the following ways, or partly in one way and partly in the other:

(1) to meet expenditure incurred for capital purposes[7]; or
(2) as provision to meet credit liabilities[8];

and may be so applied in the financial year[9] in which the receipts are received or in any later financial year[10]. Such a determination by a local authority as to the manner in which the usable part of its capital receipts are to be applied may not be made later than 30 September in the financial year following that in which, in accordance with the determination, the receipts are to be applied[11].

For the purposes of Part IV, to the extent that the usable part of an authority's capital receipts are applied as mentioned in head (1) above, it must be taken to be so applied at the time when the expenditure in question is defrayed[12]. For the purposes of Part IV, to the extent that the usable part of an authority's capital receipts are applied as mentioned in head (2) above, it must be taken to be so applied:

(a) if it is used as an amount of credit cover[13], when the credit arrangement[14] in question is entered into or varied[15]; and
(b) in any other case, on the last day of the financial year in which (pursuant to the local authority's determination) it is so applied[16].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 As to reserved parts see para 611 et seq post.
3 Local Government and Housing Act 1989 s 60(1)(a).
4 Ie by virtue of ibid s 59(8) or s 59(9) (see para 614 post): see s 60(1)(b).

5 Ie for the purposes of ibid s 59(1)–(7): see s 60(1)(b). However, nothing in s 60 applies to capital receipts which fall within s 59(7) (see para 614 post): see s 60(1).
6 Ie ibid Pt IV (ss 39–66) (as amended): see s 60(2).
7 Ibid s 60(2)(a). As to expenditure for capital purposes see para 562 ante.
8 Ibid s 60(2)(b).
9 For the meaning of 'financial year' see para 559 note 1 ante.
10 Local Government and Housing Act 1989 s 60(2).
11 Ibid s 60(3).
12 Ibid s 60(4).
13 Ie as mentioned in ibid s 50(3)(b): see para 585 ante.
14 As to credit arrangements see paras 579–593 ante.
15 Local Government and Housing Act 1989 s 60(5)(a).
16 Ibid s 60(5)(b). In the case of a determination under s 60(2) which relates to the application of the usable part of a 1980 Act receipt in the financial year beginning on 1 April 1990, and is made not later than 30 September 1990, s 60(5)(b) is to have effect with the substitution of a reference to 1 April 1990 for the reference to the last day of the financial year in which the usable part is so applied: s 60(6). For the meaning of '1980 Act receipts' see para 606 note 21 ante.

B. RESERVED PARTS

611. Reservation of receipts. At the time when a local authority[1] receives a capital receipt, a part of that receipt (referred to in Part IV of the Local Government and Housing Act 1989[2] as 'the reserved part') must be set aside by the authority as provision to meet credit liabilities[3]. The reserved part of a capital receipt must be, in the case of a receipt in respect of the disposal of dwelling-houses[4], 75 per cent[5], and in the case of any other receipt, 50 per cent[6].

1 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
2 Ie the Local Government and Housing Act 1989 Pt IV (ss 39–66) (amended): see s 59(1).
3 Ibid s 59(1). Section 59(1) does not apply to a capital receipt received by an authority as trustee of a trust fund which is held for charitable purposes: s 59(7).
4 Ie held for the purposes of the Housing Act 1985 Pt II (ss 8–57) (as amended) (provision of housing): see HOUSING vol 22 (Reissue) para 272 et seq.
5 Local Government and Housing Act 1989 s 59(2)(a): see para 612 post.
6 Ibid s 59(2)(b): see para 612 post.

612. Receipts from housing assets. The reserved part[1] of a capital receipt must be, in the case of a receipt in respect of the disposal of dwelling-houses[2], 75 per cent[3]. The Secretary of State[4] may by regulations alter the percentage which[5] is for the time being the reserved part of any capital receipt or provide that the amount which is the reserved part of any capital receipt must be determined in accordance with the regulations; and any such regulations may make different provision in relation to different descriptions of capital receipts and different descriptions of local authority[6], and where the regulations specify a percentage, it may be any percentage from nil to 100[7]. If the Secretary of State by regulations so provides, capital receipts of a description specified in the regulations must be treated for the purposes only of this provision as reduced by an amount determined in accordance with the regulations[8].

In the case of a capital receipt which is received in respect of the disposal of an interest in a hostel[9] or a lodging-house[10], the reserved part must be 75 per cent if:

(1) the hostel or lodging-house is held for the purposes of Part II of the Housing Act 1985[11];

(2) the receipt is not a nil per cent receipt[12]; and

(3) where the authority is a local authority in Wales, the reserved part of the receipt does not fall to be determined in accordance with the regulations[13].

For receipts from the disposal of all other housing assets the set aside rate is 50 per cent[14].

The following special provisions pertain to Wales. The reserved part is to be nil per cent in the case of a capital receipt which is received in respect of a disposal of an interest in land where:

(a) the authority is a local authority in Wales[15];

(b) the land is held for the purposes of Part II of the Housing Act 1985[16]; and

(c) if there is a building situated on the land, the building does not, in whole or in part, comprise a dwelling[17].

The reserved part is to be nil per cent in the case of a capital receipt which is received in respect of a disposal of an interest in a dwelling where:

(i) the authority is a local authority in Wales[18];

(ii) the dwelling was normally let, or available for letting, for the purposes of Part II of the Housing Act 1985[19]; and

(iii) the authority makes the disposal by granting a shared ownership lease[20], or on condition that the purchaser, for the purpose of repairing or improving the dwelling, will carry out significant works within a specified period[21].

The reserved part is also to be nil per cent in the case of capital receipts which are received in respect of certain other disposals of interests in dwellings[22].

In any case where the consent of the Secretary of State is required for a disposal of a dwelling-house or any other property, and the Secretary of State gives a direction with respect to a capital receipt in respect of that disposal, the above provision regarding the set aside rate[23] is to have effect in relation to that capital receipt as if it provided that the reserved part of the receipt were a percentage thereof specified in the direction or, according as the direction provides, an amount determined in accordance with the direction[24].

1 For the meaning of 'the reserved part' see para 611 ante.

2 Ie held for the purposes of the Housing Act 1985 Pt II (ss 8–57) (as amended) (provision of housing): see HOUSING vol 22 (Reissue) para 272 et seq. See para 611 ante.

3 Local Government and Housing Act 1989 s 59(2)(a).

4 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

5 Ie by virtue of the Local Government and Housing Act 1989 s 59(2) (see the text and notes 1–3 supra: and para 611 ante) or the previous exercise of this power.

6 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

7 Local Government and Housing Act 1989 s 59(3).

8 Ibid s 59(4). The Local Authorities (Capital Finance) (Amendment) Regulations 1999, SI 1999/501, and the Local Authorities (Capital Finance and Approved Investments) (Amendment) Regulations 1999, SI 1999/1852, have been made under the Local Government and Housing Act 1989 s 59(4), (5).

9 Ie within the meaning given to that expression in the Housing Act 1985 s 622 (see HOUSING vol 22 (Reissue) para 266): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 72.

10 Ie within the meaning given to that expression in the Housing Act 1985 s 56 (see HOUSING vol 22 (Reissue) para 7): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 72.
11 Ie the Housing Act 1985 Pt II (as amended) (provision of housing accommodation) (see HOUSING vol 22 (Reissue) para 272 et seq): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 72(a).
12 Ibid reg 72(b).
13 Ie in accordance with ibid reg 78 (see the text and note 22 infra): see reg 72(c).
14 See the Local Government and Housing Act 1989 s 59(2)(b); and para 611 ante.
15 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 76(a).
16 Ibid reg 76(b).
17 Ie within the extended meaning given to that expression in ibid reg 22(1): see reg 76(c); and para 584 note 15 ante.
18 Ibid reg 77(a).
19 Ibid reg 77(b).
20 Ie within the meaning given to that expression in the Housing Act 1985 s 622: see HOUSING vol 22 (Reissue) para 7.
21 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 77(c).
22 See ibid reg 78.
23 Ie the Local Government and Housing Act 1989 s 59(2).
24 Ibid s 59(6). Any direction under s 59(6) relating to a 1980 Act receipt must be made before 1 April 1990: Local Government and Housing Act 1989 s 59(6). For the meaning of '1980 Act receipts' see para 606 note 21 ante.

613. Other receipts with specific set aside rates. The reserved part[1] of a capital receipt is to be nil per cent where:

(1) at the beginning of the financial year[2] in which the receipt is received, the credit ceiling of the local authority[3] was nil or a negative amount[4]; and

(2) at the time the receipt is received, the authority has no money outstanding by way of borrowing[5] other than disregarded borrowing[6].

The reserved part is to be 50 per cent in the case of a capital receipt, other than a nil per cent receipt, which is received in respect of a disposal of an investment which is not an investment in share capital or loan capital in a body corporate[7].

The reserved part is to be 75 per cent in the case of a capital receipt, other than a nil per cent receipt, which is received in respect of a disposal of share capital or loan capital in a body corporate, other than a disposal of share capital or loan capital which:

(a) is capital in a bus company[8];

(b) is capital in a public airport company[9];

(c) is in a company to which the authority has at any time made a disposal of an asset other than housing land, and was either acquired as consideration for that disposal, or, where that disposal was in consideration for the issue of share capital or loan capital in the company, acquired at any time after that disposal[10];

(d) is in a company which, at the time of the disposal, is carrying on the business of operating an airport and is not a public airport company, and which, at the time when the authority acquired the capital, was carrying on the business of operating an airport or was in the course of taking over that business from the authority[11];

(e) is in a company which was formed by, or with the participation of, the authority, and, at the time of the disposal, is an education or training company[12];

(f) is in a non-housing company[13] and was acquired by the authority

before 10 March 1988, or on or after 1 April 1990 for the purpose of providing financial assistance[14];

(g) is in a company formed by, or with the participation of, the authority for any of the purposes referred to in the Local Government Act 1972[15]; or

(h) is in a company formed by, or with the participation of, the authority[16].

The reserved part is to be 75 per cent in the case of a sum which is a capital receipt by virtue of the Local Authorities (Capital Finance) Regulations 1997[17].

The following receipts are specifically defined as having a 100 per cent set aside rate:

(i) grants and advances to housing associations[18];

(ii) payments in respect of transferred property and deemed borrowing[19];

(iii) voluntary payments by participant authorities to designated authorities[20]; and

(iv) payments to the metropolitan police authority[21].

1 For the meaning of 'the reserved part' see para 611 ante.

2 For the meaning of 'financial year' see para 559 note 1 ante.

3 Ie as determined under the Local Government and Housing Act 1989 Sch 3 Pt III. For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.

4 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 65(2)(a).

5 As to borrowing by a local authority see para 561 note 10 ante.

6 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 65(2)(b). In addition, reg 65(3) (as added) applies to the receipt: see reg 65(2)(c) (substituted by SI 1998/1937).

For the purposes of the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 65, 'disregarded borrowing' means: (1) borrowing which is short-term borrowing for the purposes of the Local Government and Housing Act 1989 s 45(1)(b) (the authority's own borrowing limits) (see para 599 ante); (2) borrowing undertaken under the City of London (Various Powers) Act 1924 s 5 (repealed); or (3) borrowing undertaken before 24 August 1995, other than borrowing by the issue of stock on or after 15 December 1993, from a person who is not a relevant lender: Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 65(1).

For the purposes of reg 65, 'relevant lender' means: (a) the Public Works Loan Board; (b) the Bank of England; (c) the European Investment Bank; (d) a body mentioned in any of the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990, SI 1990/426, reg 2, Schedule Pt II paras 1–17 (as amended), 28 (as added), 29 (as added) or 30 (as added); (e) an authorised institution (within the meaning which that expression has in the Banking Act 1987 (see generally BANKING)); or (f) a building society (within the meaning given to that expression in the Building Societies Act 1986 (see generally BUILDING SOCIETIES)): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 65(1).

7 Ibid reg 66A (added by SI 1998/1937).

8 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(2)(a). For the purposes of reg 66, 'capital in a bus company' means share capital or loan capital which is in a company formed under the Transport Act 1985 s 59 or s 67 (see ROAD TRAFFIC vol 40(2) (Reissue) paras 898, 905) and was acquired by the authority before 15 February 1989, or is in a company formed under s 61 (see ROAD TRAFFIC vol 40(2) (Reissue) para 900) and was acquired by the authority before the date, if any, specified in relation to the company under s 61(9): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(1).

9 Ibid reg 66(2)(b). For the purposes of reg 66, 'capital in a public airport company' means share capital or loan capital which is in a public airport company, and which was acquired by the authority before 15 February 1989, or on or after 15 February 1989 as consideration for a transfer to the company of any property or rights of the authority, or in advance of such a transfer by virtue of a scheme under the Airports Act 1986 s 15 (see

AVIATION vol 2 (Reissue) para 1042): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(1). 'Public airport company' has the same meaning as in the Airports Act 1986 Pt II (ss 12–28) (as amended) (see AVIATION vol 2 (Reissue) para 1111): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(1).

10 Ibid reg 66(2)(c) (substituted by SI 1998/1937).

11 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(2)(cc) (added by SI 1998/1937).

12 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(2)(d). For the purposes of reg 66, 'education or training company' means a company which is engaged principally either: (1) in the activities of providing, constructing, improving, repairing and maintaining land and any other assets in use for the purpose of a school which is a maintained school within the meaning given to that expression in the Education Act 1993 s 305 (repealed); or (2) in the provision of the services which the Secretary of State is under a duty to secure under the Employment and Training Act 1973 s 8 (as substituted) (careers services for school and college students) (see EMPLOYMENT vol 16 (2000 Reissue) para 603), or has a power to secure under s 9 (as substituted) (careers services for others) (see EMPLOYMENT vol 16 (2000 Reissue) para 604): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(1). As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

13 For the purposes of ibid reg 66, 'non-housing company', in relation to any share capital or loan capital, means a company which has not, at any time since the date of issue of the capital concerned, engaged in any of the activities of providing, constructing, improving, managing, facilitating or encouraging the construction or improvement of housing accommodation: reg 66(1).

14 Ie under the Local Government and Housing Act 1989 s 33 (repealed) (promotion of economic development): see the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(2)(e).

15 Ie the purposes referred to in the Local Government Act 1972 s 145(1) (provision of entertainments) (see para 474 ante): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(2)(f).

16 Ie as mentioned in the Environmental Protection Act 1990 s 32(3)(a) (transition to waste disposal companies) (see PROTECTION OF ENVIRONMENT AND PUBLIC HEALTH vol 38 (Reissue) para 175), or pursuant to directions given by the Secretary of State under s 32(2) (see PROTECTION OF ENVIRONMENT AND PUBLIC HEALTH vol 38 (Reissue) para 175): Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 66(2)(g).

17 Ie by virtue of ibid reg 59 (see para 607 ante): see reg 69.

18 See ibid reg 67.

19 See ibid reg 68.

20 See ibid reg 68A (added by SI 1998/1937).

21 See the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 68B (added by SI 2000/1474).

614. Special provisions. The requirement[1] to set aside a reserved part[2] of a capital receipt does not apply to a capital receipt received by a local authority[3] as trustee of a trust fund which is held for charitable purposes[4].

Where a local authority receives a capital receipt in respect of an asset, investment, grant or other financial assistance which was originally acquired or made by the authority wholly or partly out of moneys provided by Parliament on terms which require, or enable a Minister of the Crown[5] to require, the payment of any sum to such a minister on or by reference to the disposal of the asset or investment or the repayment of the grant or assistance, the amount of the capital receipt must be treated[6] as reduced by the sum which appears to the authority to be so payable, including, in the case of a 1980 Act receipt[7], any sum which was payable, but was not in fact paid, before 1 April 1990[8].

Where a local authority receives a capital receipt, not being a 1980 Act receipt, in respect of a disposal of land held for the purposes of Part II of the Housing Act 1985[9], or any other disposal of land made by virtue of the

right to buy under Part V of the Housing Act 1985[10], the amount of the capital receipt must be treated[11] as reduced by so much of the receipt as is applied by the authority in defraying the administrative costs of and incidental to any such disposal[12].

1 Ie in the Local Government and Housing Act 1989 s 59(1): see para 611 ante.
2 For the meaning of 'the reserved part' see para 611 ante.
3 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
4 Local Government and Housing Act 1989 s 59(7). As to charitable purposes see CHARITIES vol 5(2) (2001 Reissue) para 1 et seq.
5 For the meaning of 'Minister of the Crown' see para 567 note 1 ante.
6 Ie for the purposes of the Local Government and Housing Act 1989 s 59(1)–(7).
7 For the meaning of '1980 Act receipts' see para 606 note 21 ante.
8 Local Government and Housing Act 1989 s 59(8).
9 Ie the Housing Act 1985 Pt II (ss 8–57) (as amended) (see HOUSING vol 22 (Reissue) para 272 et seq): see the Local Government and Housing Act 1989 s 59(9)(a).
10 Ie the Housing Act 1985 Pt V (ss 118–188) (as amended) (see LANDLORD AND TENANT vol 27(2) (Reissue) para 1628 et seq): see the Local Government and Housing Act 1989 s 59(9)(b).
11 Ie for the purposes of ibid s 59(1)–(8).
12 Ibid s 59(9).

615. All other receipts. The Secretary of State[1] may by regulations alter the percentage which[2] is for the time being the reserved part[3] of any capital receipt or provide that the amount which is the reserved part of any capital receipt must be determined in accordance with the regulations, and any such regulations may make different provision in relation to different descriptions of capital receipts and different descriptions of local authority[4], and where the regulations specify a percentage, it may be any percentage from nil to 100[5].

The reserved part is to be nil per cent in the case of any capital receipt other than a capital receipt which is received in respect of a disposal of housing land[6].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
2 Ie by virtue of the Local Government and Housing Act 1989 s 59(2) or the previous exercise of this power: see para 611 ante.
3 For the meaning of 'the reserved part' see para 611 ante.
4 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
5 Local Government and Housing Act 1989 s 59(3).
6 Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 64A(1) (reg 64A added by SI 1998/1937). The Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 64A (as added) does not apply to a capital receipt which is of a description for which the reserved part is specified in regs 65–78 (see para 613 ante): reg 64A(2) (as so added).

616. Notional capital receipts. The amount of a notional capital receipt[1] that has to be set aside is the amount which would have been the capital receipt if consideration had been wholly in money paid to the local authority[2]. In the majority of cases that will be nil[3].

Where consideration is received in respect of a disposal, repayment or payment, the local authority must set aside, at the time of the disposal or the assignment or waiver of the repayment or payment, and as provision to meet credit liabilities, an amount which, except in so far as regulations made

or directions given by the Secretary of State[4] otherwise provide, must be equal to that which[5] would be the reserved part[6] of the notional capital receipt[7]. The amount falling to be set aside by a local authority under the above provision must be so set aside from the usable part[8] of the authority's capital receipts[9], or from a revenue account[10] of the authority[11].

1 For the meaning of 'the notional capital receipt' see para 609 ante.
2 See the Local Government and Housing Act 1989 s 61(2); and para 609 ante. For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
3 See para 615 ante.
4 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
5 Ie under the Local Government and Housing Act 1989 s 59: see paras 611–612 ante.
6 For the meaning of 'the reserved part' see para 611 ante.
7 Local Government and Housing Act 1989 s 61(4). The Local Authorities (Capital Finance and Approved Investments) (Amendment) Regulations 1999, SI 1999/1852, have been made under the Local Government and Housing Act 1989 s 61(4).
8 As to the usable part of capital receipts see para 610 ante.
9 Local Government and Housing Act 1989 s 61(5)(a).
10 For the meaning of 'revenue account' see para 560 note 3 ante.
11 Local Government and Housing Act 1989 s 61(5)(b).

C. RELAXATION OF THE REQUIREMENTS TO SET ASIDE RECEIPTS

617. Forms of relaxation. Relief from the requirements to set aside capital receipts is provided by regulations under which the Secretary of State[1] can provide that a sum which would be a capital receipt will not be a capital receipt[2] or by reducing the set aside rate to nil[3].

In addition the Local Authorities (Capital Finance) Regulations 1997[4] make extensive provision for two forms of relaxation of the set aside rules. First, Part VIII[5] makes provision for deductions to be made from the capital receipt or notional capital receipt[6] before the set aside is calculated[7]. Secondly, Part IX[8] specifies particular set aside rates on particular notional capital receipts[9].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
2 See the Local Government and Housing Act 1989 s 58(9); and para 606 ante.
3 See paras 612, 613, 615, 616 ante.
4 Ie the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319 (as amended).
5 Ie ibid Pt VIII (regs 79–104A) (as amended).
6 For the meaning of 'the notional capital receipt' see para 609 ante.
7 See the Local Government and Housing Act 1989 s 59(4); and para 612 ante.
8 Ie the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, Pt IX (regs 105–114) (as amended).
9 See the Local Government and Housing Act 1989 s 61(4); and para 616 ante.

618. Current relevance of the relaxation provisions. Since 1 September 1998 the set aside rate for most non-housing receipts is nil[1] and there is a general exemption for local authorities[2] that are debt free. Therefore the only relevance of the extensive relaxation provisions set out in Part VIII and Part IX of the Local Authorities (Capital Finance) Regulations 1997[3] is in relation to receipts from the disposal of housing land by local authorities that are not debt free.

1 See the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, reg 64A (as added); and para 615 ante.
2 For the meaning of 'local authority' for these purposes see para 559 ante. For the meaning of 'local authority' generally see para 24 ante.
3 Ie the Local Authorities (Capital Finance) Regulations 1997, SI 1997/319, Pt VIII (regs 79–104A) (as amended), Pt IX (regs 105–114) (as amended).

(7) COMPANIES IN WHICH LOCAL AUTHORITIES HAVE INTERESTS

619–623. Companies controlled by local authorities and arm's length companies ... Authorities acting jointly and by committees.
Material relating to this part has been revised and published as part of the title LOCAL GOVERNMENT vol 69 (2009).

(8) FINANCIAL ADMINISTRATION AND ACCOUNTS

(i) Administration

624. Responsible officer. Every local authority[1] must make arrangements for the proper administration of its financial affairs and must secure that one of its officers has responsibility for the administration of those affairs[2]. This is without prejudice to the general power of a local authority to do any thing which is calculated to facilitate or is conducive or incidental to the discharge of any of its functions[3].

Similarly, police authorities[4], the Service Authority for the National Crime Squad[5], any combined fire authority[6] and authorities established under the Local Government Act 1985[7] must make arrangements for the proper administration of their financial affairs and must secure that one of their officers has responsibility for the administration of those affairs[8].

The Common Council of the City of London must make arrangements for the proper administration of such of its financial affairs as relate to it in its capacity as a local authority, police authority or port health authority[9], and secure that one of its officers has responsibility for the administration of those affairs[10].

While the responsible officer is a delegate of the local authority, the authority and its members retain responsibility for the proper administration of the finances of the authority[11]. The responsible officer may delegate his duties[12] to other officers of the local authority[13].

The responsible officer may be personally liable for surcharge[14].

1 For the meaning of 'local authority' see para 24 ante.

2 Local Government Act 1972 s 151. Any reference in the Accounts and Audit Regulations 1996, SI 1996/590, to the 'responsible financial officer' means: (1) the person who, by virtue of the Local Government Act 1972 s 151, is responsible for the administration of the financial affairs of a relevant body or, if no person is so responsible, the person who is responsible for keeping the accounts of such a body; or (2) if the person referred to in head (1) supra is unable to act owing to absence or illness, such member of his staff as is nominated by him for the purposes of the Local Government Finance Act 1988 s 114 (as amended) (see para 626 post) or, if no such nomination is made, the person nominated by him for these purposes: Accounts and Audit Regulations 1996, SI 1996/590, reg 2(2).

'Relevant body' means a body whose accounts are required to be audited in accordance with the Local Government Finance Act 1982 Pt III (ss 11–36) (now repealed) other than a health service body or a passenger transport executive: Accounts and Audit Regulations 1996, SI 1996/590, reg 2(1). See also para 662 post.

3 See the Local Government Act 1972 ss 111(1), 151; and paras 411, 518 ante.

4 Ie police authorities established under the Police Act 1996 s 3 (see POLICE vol 36(1) (Reissue) para 316 et seq): Local Government Finance Act 1988 s 112(2)(a) (substituted by the Police and Magistrates' Courts Act 1994 s 43, Sch 4, Pt I para 33; and amended by the Police Act 1996 s 103, Sch 7 para 1(2)(zb)).

5 Local Government Finance Act 1988 s 112(2)(ab) (substituted by the Police Act 1997 s 88, Sch 6 para 27).

6 Local Government Finance Act 1988 s 112(2)(b).
7 Ie any authority established by the Local Government Act 1985 Pt III (ss 18–22) (repealed) or Pt IV (ss 23–42) (as amended) (see para 53 et seq ante): s 105(1).
8 See the Local Government Finance Act 1988 s 112(1); and the Local Government Act 1985 s 73.
9 Local Government and Housing Act 1989 s 6(1)(a).
10 Ibid s 6(1)(b).
11 *Lloyd v McMahon* [1987] AC 625, [1987] 2 WLR 821, HL; *Provident Mutual Life Assurance Association v Derby City Council* [1981] 1 WLR 173, 79 LGR 297, HL.
12 Ie other than the reporting duty under the Local Government Finance Act 1988 s 114: see para 626 post.
13 *Provident Mutual Life Assurance Association v Derby City Council* [1981] 1 WLR 173, 79 LGR 297, HL.
14 See the Audit Commission Act 1998 s 17 (as amended), s 18 (as amended; prospectively repealed); and para 677 post.

625. Qualifications and appointment of responsible officer. The person having responsibility[1] for the administration of the financial affairs of a relevant authority[2] must fulfil certain requirements[3].

The responsible officer holds a politically restricted post for the purposes of the provisions of Part I of the Local Government and Housing Act 1989[4]. The responsible officer is therefore disqualified from becoming or remaining a member of a local authority[5]. The appointment of the responsible officer must be made on merit[6].

Where the relevant authority[7] proposes to appoint a chief officer[8], and it is not proposed that the appointment be made exclusively from among its existing officers, the authority must draw up a statement specifying the duties of the officer concerned and any qualifications or qualities to be sought in the person to be appointed[9], make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it[10] and make arrangements for a copy of the statement mentioned above to be sent to any person on request[11]. Every appointment of a chief officer must be made by the authority[12].

1 Ie under the Local Government Act 1972 s 151 (see para 624 ante), the Local Government Act 1985 s 73 (see para 624 ante), the Greater London Authority Act 1999 s 127 (see LONDON GOVERNMENT) or the Local Government Finance Act 1988 s 112 (as amended) (see para 624 ante).
2 For the purposes of ibid Pt VIII (ss 111–116) (as amended), each of the following is a relevant authority:
   (1) a county council (s 111(2)(a));
   (2) a county borough council (s 111(2)(aa) (added by the Local Government (Wales) Act 1994 s 38(11), Sch 2));
   (3) a district council (Local Government Finance Act 1988 s 111(2)(b));
   (4) the Greater London Authority (s 111(2)(bb) (added by the Greater London Authority Act 1999 s 128(1), (2));
   (5) a functional body, within the meaning of the Greater London Authority Act 1999 (see LONDON GOVERNMENT) (Local Government Finance Act 1988 s 111(2)(bc) (added by the Greater London Authority Act 1999 s 128(1), (2));
   (6) the London Pensions Fund Authority (Local Government Finance Act 1988 s 111(2)(bd) (added by the Greater London Authority Act 1999 s 128(1), (2));
   (7) a London borough council (Local Government Finance Act 1988 s 111(2)(c));
   (8) a police authority established under the Police Act 1996 s 3 (see POLICE vol 36(1) (Reissue) para 316 et seq) (Local Government Finance Act 1988 s 111(2)(e) (amended by the Police Act 1996 s 103, Sch 7 para 1(2)(zb));
   (9) the Service Authority for the National Crime Squad (Local Government Finance Act 1988 s 111(2)(ea) (added by the Police Act 1997 s 68));
   (10) a metropolitan county fire and civil defence authority (Local Government Finance Act 1988 s 111(2)(g));
   (11) a metropolitan county passenger transport authority (s 111(2)(i));

(12) a waste disposal authority (s 111(2)(j)); and
(13) the Council of the Isles of Scilly (s 111(2)(k)).

As to areas and authorities in England see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante.

3 In general, he must be a member of a specified body but, if he had responsibility for the administration of the financial affairs of an authority immediately before a certain date, this may be a sufficient qualification: see the Local Government Finance Act 1988 s 113(1), (2) (s 113(1) amended by the Greater London Authority Act 1999 s 129); and the Local Government and Housing Act 1989 s 6(3), (4). The bodies specified are: the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Chartered Association of Certified Accountants, the Chartered Institute of Public Finance and Accountancy, the Institute of Chartered Accountants in Ireland, the Chartered Institute of Management Accountants, and any other body of accountants established in the United Kingdom and for the time being approved by the Secretary of State for these purposes: see the Local Government Finance Act 1988 s 113(3); and the Local Government and Housing Act 1989 s 6(5). For the meaning of 'United Kingdom' see para 104 note 18 ante.

4 See ibid s 2(1)(b), (6)(d); and para 120 ante. The provisions referred to in the text are those of Pt I (ss 1–21) (as amended).

5 See ibid s 1(1); and para 119 ante.

6 Ibid s 7(1), (2)(e).

7 For these purposes, 'relevant authority' means a county or district council, the council of a London borough, the Common Council of the City of London and the Council of the Isles of Scilly in its capacity as a local authority, police authority or port health authority: Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, reg 1(2).

8 'Chief officer', in relation to a relevant authority, includes a statutory chief officer mentioned in the Local Government and Housing Act 1989 s 2(6)(a), (c), (d) (see para 120 ante): Local Authorities (Standing Orders) Regulations 1993, SI 1993/202, reg 1(2).

9 Ibid reg 2, Sch 1 Pt I standing order 1(a).

10 Ibid Sch 1 Pt I standing order 1(b). Where a post has been advertised as provided in standing order 1(b), the authority must interview all qualified applicants for the post or select a short list of such qualified applicants and interview those included on the short list: Sch 1 Pt I standing order 2. Where no qualified person has applied, the authority must make further arrangements for advertisement in accordance with Sch 1 Pt I standing order 1(b).

11 Ibid Sch 1 Pt I standing order 1(c).

12 Ibid Sch 1 Pt I standing order 3.

626. Reports of responsible officer or chief finance officer. The responsible officer is referred to as the 'chief finance officer' for the purposes of the following provisions, and has the following duties[1]. The chief finance officer of a relevant authority[2] must make a report if it appears to him that the authority, a committee[3] of the authority, a person holding any office or employment under the authority, a member of a police force maintained by the authority, or a joint committee[4] on which the authority is represented:

(1) has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful[5];
(2) has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority[6]; or
(3) is about to enter an item of account the entry of which is unlawful[7].

The chief finance officer of a relevant authority must make such a report if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year[8] is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure[9].

It is the duty of the chief finance officer of a relevant authority, in preparing such a report, to consult so far as practicable with the person who is for the time being designated as the head of the authority's paid service[10]

and with the person who is for the time being responsible for performing the duties of the authority's monitoring officer[11].

Where a chief finance officer of a relevant authority has made a report under these provisions he must send a copy of it to the person who at the time the report is made has the duty to audit the authority's accounts and each person who at that time is a member of the authority[12].

These duties of a chief finance officer of a relevant authority must be performed by him personally[13]. If the chief finance officer is unable to act owing to absence or illness his duties must be performed:

(a) by such member of his staff as is a member of one or more of the bodies mentioned[14] and is for the time being nominated by the chief finance officer for these purposes[15]; or

(b) if no member of his staff is a member of one or more of those bodies, by such member of his staff as is for the time being nominated by the chief finance officer for these purposes[16].

A relevant authority must provide its chief finance officer with such staff, accommodation and other resources as are in his opinion sufficient to allow his duties to be performed[17].

Similar provisions apply to the chief finance officer of the Common Council of the City of London[18].

1 Local Government Finance Act 1988 s 114(1) (amended by the Greater London Authority Act 1999 s 130(1), (2)).

2 Ie under the Local Government Act 1972 s 151 (see para 624 ante), the Local Government Act 1985 s 73 (see para 624 ante), the Greater London Authority Act 1999 s 127 (see LONDON GOVERNMENT) or the Local Government Finance Act 1988 s 112 (as amended) (see para 624 ante): s 114(1) (as amended: see note 1 supra). For the meaning of 'relevant authority' see para 625 note 2 ante.

3 For the purposes of ibid s 114, references to a committee (joint or otherwise) include references to a sub-committee: s 114(8)(b). As to committees and sub-committees see para 298 et seq ante; and as to joint committees see para 306 ante.

4 For the purposes of ibid s 114, references to a joint committee are to a committee on which two or more relevant authorities are represented: s 114(8)(a).

5 Ibid s 114(2)(a) (s 114(2) amended by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 34).

6 Local Government Finance Act 1988 s 114(2)(b) (as amended: see note 5 supra).

7 Ibid s 114(2)(c) (as amended: see note 5 supra).

8 For the meaning of 'financial year' see para 531 note 3 ante.

9 Local Government Finance Act 1988 s 114(3).

10 Ie under the Local Government and Housing Act 1989 s 4 (see para 333 ante): see the Local Government Finance Act 1988 s 114(3A)(a) (s 114(3A) added by the Local Government and Housing Act 1989 s 139, Sch 5 para 66).

11 Ie under the Local Government and Housing Act 1989 s 5 (as amended) (see para 335 ante): see the Local Government Finance Act 1988 s 114(3A)(b) (as added: see note 10 supra).

12 Ibid s 114(4).

13 Ibid s 114(5).

14 Ie mentioned in ibid s 113(3): see para 625 ante.

15 Ibid s 114(6)(a).

16 Ibid s 114(6)(b).

17 Ibid s 114(7).

18 See the Common Council and New Successor Bodies (Chief Finance Officer) Regulations 1991, SI 1991/445. These regulations, which make provision equivalent to the Local Government Finance Act 1988 ss 114–116 (as amended), apply to the Common Council of the City of London in its capacity as a local authority, police authority or port health authority, and to pension authorities: Common Council and New Successor Bodies (Chief Finance Officer) Regulations 1991, SI 1991/445, reg 3.

627. **Authorities' duties once report is made.** Where copies of a report have been sent[1], the relevant authority[2] must consider the report at a meeting where it must decide whether it agrees or disagrees with the views contained in the report and what action (if any) it proposes to take in consequence of it[3]. The meeting must be held not later than the end of the period of 21 days beginning with the day on which copies of the report are sent[4]. If the report was made concerning unlawful expenditure or conduct[5], then, during the prohibition period[6], the course of conduct which led to the report being made must not be pursued[7]. If the report was made concerning expenditure exceeding resources[8], then, during the prohibition period, the authority may not enter into any new agreement which may involve the incurring of expenditure (at any time) by the authority[9].

Where it is proposed to hold a meeting under these provisions[10], the authority's proper officer[11] must as soon as is reasonably practicable notify its auditor of the date, time and place of the proposed meeting[12]. As soon as is reasonably practicable after such a meeting is held, the authority's proper officer must notify its auditor of any decision made at the meeting[13].

Similar provisions apply to the Common Council of the City of London in its capacity as a local authority, police authority or port health authority, and to pensions authorities[14].

1 Ie under the Local Government Finance Act 1988 s 114 (as amended): see para 626 ante.
2 For the meaning of 'relevant authority' see para 625 note 2 ante.
3 Local Government Finance Act 1988 s 115(1), (2).
4 Ibid s 115(3).
5 Ie under ibid s 114(2) (as amended): see para 626 ante.
6 In ibid s 115, 'the prohibition period' means the period beginning with the day on which copies of the report are sent, and ending with the first business day to fall after the day (if any) on which the authority's consideration of the report under s 115(2) (see the text and note 3 supra) is concluded: s 115(9). For these purposes, 'business day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales: s 115(12).
7 Ibid s 115(5). If s 115(5) is not complied with, and the authority makes any payment in the prohibition period as a result of the course of conduct being pursued, it must be taken not to have had power to make the payment (notwithstanding any obligation to make it under contract or otherwise): s 115(7).
8 Ie under ibid s 114(3): see para 626 ante.
9 Ibid s 115(6). If s 115(6) is not complied with, the authority must be taken not to have had power to enter into the agreement (notwithstanding any option to do so under contract or otherwise): s 115(8).
10 Ie under ibid s 115 (as amended): see the text and notes 1–9 supra.
11 For the purposes of ibid s 116, an authority's proper officer is the person to whom the authority has for the time being assigned responsibility to notify its auditor under s 116: s 116(3). As to the proper officer generally see para 336 ante. For the purposes of s 116, an authority's auditor is the person who for the time being has the duty to audit its accounts: s 116(4).
12 Ibid s 116(1).
13 Ibid s 116(2).
14 See the Common Council and New Successor Bodies (Chief Finance Officer) Regulations 1991, SI 1991/445.

(ii) Accounts

628. **Accounts and audit regulations.** The Secretary of State[1] may by regulations[2] applying to bodies subject to audit[3] other than health service bodies[4] make provision with respect to:

(1) the keeping of accounts[5];

(2) the form, preparation and certification of accounts and of statements of accounts[6];
(3) the deposit of the accounts of any body at its offices or at any other place[7];
(4) the publication of information relating to accounts and the publication of statements of accounts[8];
(5) the exercise of any rights of objection or inspection[9] and the steps to be taken by any body for informing local government electors[10] for the area of that body of those rights[11].

Before making any such regulations, the Secretary of State must consult:
(a) the Audit Commission[12];
(b) such associations of local authorities[13] as appear to him to be concerned[14]; and
(c) such bodies of accountants as appear to him to be appropriate[15].

If a person without reasonable excuse contravenes a provision of the regulations. and the regulations declare that contravention of the provision is an offence, that person is liable on summary conviction to a fine[16]. Any expenses incurred by an auditor in connection with proceedings in respect of such an offence alleged to have been committed in relation to the accounts of any body, so far as not recovered from any other source, are recoverable from that body[17].

1 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.
2 Regulations under the Audit Commission Act 1998 s 27 may make different provision in relation to bodies of different descriptions: s 27(2). As to the regulations that have been made, or that have effect as if made, under s 27 see the Accounts and Audit Regulations 1996, SI 1996/590 (amended by SI 1997/2747; SI 2000/3237).
3 For the meaning of 'body subject to audit' see para 654 note 5 post. As to the bodies that are subject to audit see para 662 post.
4 For the meaning of 'health service body' see para 658 note 2 post.
5 Audit Commission Act 1998 s 27(1)(a).
6 Ibid s 27(1)(b).
7 Ibid s 27(1)(c).
8 Ibid s 27(1)(d).
9 Ie conferred by ibid s 14 (see para 673 post), s 15 (see para 674 post) or s 16 (as amended) (see para 675 post).
10 For the meaning of 'local government elector' see para 115 note 2 ante; definition applied by virtue of ibid s 53(2). See further para 673 note 1 post.
11 Ibid s 27(1)(e).
12 Ibid s 27(3)(a). As to the Audit Commission see para 653 et seq post.
13 For the meaning of 'local authority' see para 24 ante.
14 Audit Commission Act 1998 s 27(3)(b).
15 Ibid s 27(3)(c).
16 Ibid s 27(4). The penalty is a fine not exceeding level 3 on the standard scale: see s 27(4). As to the standard scale see para 113 note 7 ante.
17 Ibid s 27(5).

629. Accounting records and control systems. A relevant body's[1] accounting system and the form of its accounts[2] and supporting accounting records must be determined by the responsible financial officer[3], and he must ensure that the accounting systems determined by him are observed and that the accounts and supporting records of the body are maintained in accordance with proper practices and kept up to date[4]. The accounting records must be sufficient to show the body's transactions and to enable the responsible financial officer to ensure that any statement of accounts,

income and expenditure account, balance sheet or record of receipts and payments and additional information to be provided by way of notes to the accounts, as the case may be, comply with the regulations[5].

The accounting records must in particular contain:

(1) entries from day to day of all sums of money received and expended by the body and the matters to which the income and expenditure or receipts and payments account relate[6];

(2) a record of the assets and liabilities of the body[7]; and

(3) a record of income and expenditure of the body in relation to claims made, or to be made, by it for contribution, grant or subsidy from any Minister of the Crown, a body to whom such a minister may pay sums out of moneys provided by Parliament or a Community institution[8].

The accounting control systems must include:

(a) measures to ensure that the financial transactions of the body are recorded as soon as reasonably practicable and as accurately as reasonably possible, measures to enable the prevention and detection of inaccuracies and fraud, and the ability to reconstitute any lost records[9];

(b) identification of the duties of officers dealing with financial transactions and division of responsibilities of those officers in relation to significant transactions[10]; and

(c) procedures for uncollectable amounts, including bad debts, not to be written off except with the approval of the responsible financial officer or such member of his staff as is nominated by him for this purpose and for the approval to be shown in the accounting records[11].

A relevant body must maintain an adequate and effective system of internal audit of its accounting records and control systems[12]. Any officer or member of the body must, if the body requires, make available such documents of the body which relate to its accounting and other records as appear to that body to be necessary for the purpose of the audit, and must supply the body with such information and explanation as that body considers necessary for that purpose[13].

1 For the meaning of 'relevant body' see para 624 note 3 ante. The Accounts and Audits Regulations 1996, SI 1996/590, apply to all relevant bodies: reg 2(4).

2 As to the accounts of the Common Council of the City of London see ibid reg 2(3). As to housing revenue accounts see HOUSING vol 22 (Reissue) para 127 et seq.

3 For the meaning of 'responsible financial officer' see para 624 note 3 ante.

4 Accounts and Audits Regulations 1996, SI 1996/590, reg 4(1). This provision is subject to reg 4(3), (4) (see the text and notes 6–11 infra), and, in so far as they are not in conflict with reg 4(1), to any instructions given by a relevant body to its responsible financial officer: reg 4(1).

5 Ibid reg 4(2).

6 Ibid reg 4(3)(a).

7 Ibid reg 4(3)(b).

8 Ibid reg 4(3)(c).

9 Ibid reg 4(4)(a).

10 Ibid reg 4(4)(b).

11 Ibid reg 4(4)(c).

12 Ibid reg 5.

13 Ibid reg 5.

630. Statement of accounts. Certain bodies[1] must, in accordance with proper practices, prepare statements of accounts which must include the following:

(1) an explanatory introduction[2];
(2) summarised statements of the income and expenditure of each fund in relation to which the body is required by any statutory provision to keep a separate account[3];
(3) a summarised statement of capital expenditure, showing the sources of finance of the total capital expenditure in the period[4];
(4) a statement of the accounting policies adopted, drawing attention to any changes of policy which have a significant effect on the results shown by the statement of accounts[5];
(5) a consolidated revenue account[6];
(6) a consolidated balance sheet[7];
(7) a consolidated cash flow statement[8]; and
(8) notes to the accounts[9].

In relation to amounts shown in pursuance of heads (2), (3), (5), (6), and (7) above, a statement of accounts must show any corresponding amounts for the immediately preceding financial year[10].

Special provision is made in relation to the statement of accounts to be prepared by the Common Council of the City of London[11].

Where, in relation to a council for a parish or community, or a parish meeting of a parish not having a separate council, the budgeted income for the relevant financial period is, and for each of the two immediately preceding financial periods was, £500,000 or more, then the requirements for a statement of accounts apply to that council, or the chairman of the meeting, as the case may be, in respect of that period[12].

In the case of a local authority which is required to keep a housing revenue account[13], the statement of accounts[14] must include also an account in respect of a reserve for major repairs to property of the authority[15].

1 The bodies to which these provisions apply are:
(1) a London borough council, a county council or a district council in England (Accounts and Audit Regulations 1996, SI 1996/590, reg 6(3)(a));
(2) a county council or a county borough council in Wales (reg 6(3)(b));
(3) the Council of the Isles of Scilly (reg 6(3)(c));
(4) a joint authority and an authority established by the Waste Regulation and Disposal (Authorities) Order 1985, SI 1985/1884 (see PROTECTION OF ENVIRONMENT AND PUBLIC HEALTH) (Accounts and Audit Regulations 1996, SI 1996/590, reg 6(3)(d));
(5) any committee of a body mentioned in head (1), (2) or (4) supra which is required to keep separate accounts (reg 6(3)(e));
(6) any joint committee of two or more bodies mentioned in head (1), (2) or (4) supra (reg 6(3)(f));
(7) the Broads Authority (reg 6(3)(g));
(8) a police authority established under the Police Act 1964 s 3 (see POLICE vol 36(1) (Reissue) para 316 et seq) (Accounts and Audit Regulations 1996, SI 1996/590, reg 6(3)(h));
(9) any fire authority constituted by a combination scheme (reg 6(3)(i));
(10) a national park authority (reg 6(3)(j));
(11) a probation committee (now known as local probation boards), except the committee for the inner London probation area (reg 6(3)(k)).

As to areas and authorities in England see para 25 et seq ante; and as to areas and authorities in Wales see para 41 et seq ante. As to the Broads Authority see OPEN SPACES AND ANCIENT MONUMENTS vol 34 (Reissue) para 130. As to fire authorities constituted by combination schemes see FIRE SERVICES vol 18(2) (Reissue) para 24. As to national park authorities see OPEN SPACES AND ANCIENT MONUMENTS vol 34 (Reissue) para 157 et seq.

2 Ibid reg 6(1)(a).
3 Ibid reg 6(1)(b).
4 Ibid reg 6(1)(c).
5 Ibid reg 6(1)(d).
6 Ibid reg 6(1)(e).
7 Ibid reg 6(1)(f).
8 Ibid reg 6(1)(g).
9 Ibid reg 6(1)(h). Notes to the accounts required by reg 6(1) must include the number of employees in the period to which the accounts relate whose remuneration fell in each bracket of a scale in multiples of £10,000, starting with £40,000: reg 6(2). For this purpose, 'remuneration' means all amounts paid to or receivable by an employee and includes sums due by way of expenses allowance (so far as those sums are chargeable to United Kingdom income tax), and the estimated money value of any other benefits received by an employee otherwise than in cash: reg 6(2).
10 Ibid reg 6(1).
11 Ibid reg 6(5).
12 Ibid reg 6(4).
13 See the Local Government and Housing Act 1989 s 74. As to housing revenue accounts see HOUSING vol 22 (Reissue) para 127 et seq.
14 Ie required by the Accounts and Audit Regulations 1996, SI 1996/590, reg 6(1): see the text and notes 1–10 supra.
15 See ibid reg 6(4A) (added by SI 2000/3237).

631. Other accounting statements. Certain bodies[1] must, in accordance with proper practices, prepare income and expenditure accounts and balance sheets[2].

Where, in relation to a council for a parish or a community, or a parish meeting of a parish not having a separate council, the budgeted income for the relevant financial period is, and for each of the two immediately preceding financial periods was, £5,000 or more and less than £500,000, the council or the chairman of the meeting, as the case may be, must prepare in accordance with proper practices an income and expenditure account and a balance sheet of the council or meeting in relation to that period[3]. Where, in relation to a council for a parish or a community, or a parish or meeting of a parish not having a separate council, the budgeted income for the relevant financial period is, and for each of the two immediately preceding financial periods was, less than £5,000, the council, or the chairman of the meeting, as the case may be, must prepare in accordance with proper practices a record of receipts and payments of the council or meeting in relation to that period[4].

1 The bodies to which these provisions apply are: any charter trustees constituted under the Local Government Act 1972 s 246 (as amended) (see para 101 ante) or under an order or regulations made under the Local Government Act 1992 s 17 (as amended) (see para 66 ante) or s 19 (as amended) (see para 66 ante); a port health authority; a licensing planning committee; and an internal drainage board: Accounts and Audit Regulations 1996, SI 1996/590, reg 7(2). As to port health authorities see PROTECTION OF ENVIRONMENT AND PUBLIC HEALTH vol 38 (Reissue) paras 86–87. As to licensing planning committees see INTOXICATING LIQUOR vol 26 (Reissue) para 60. As to internal drainage boards see WATER vol 49(2) (Reissue) para 189 et seq.
2 Ibid reg 7(1).
3 Ibid reg 7(3).
4 Ibid reg 7(4).

632. Signing, approval and publication of statement of accounts, etc. A relevant body[1] must ensure that the statement of accounts[2] or, where no statement of accounts is required to be prepared, the income and expenditure account and the balance sheet[3] or, where no balance sheet is required to be prepared, the record of receipts and payments of the body[4], is

prepared in accordance with the regulations[5]. The statement of accounts, income and expenditure account and balance sheet, or record of receipts and payments, as the case may be, must be approved by a resolution of a committee of the relevant body or otherwise by a resolution of the members of the body meeting as a whole, such approval to take place as soon as reasonably practicable and in any event within six months after the end of the period to which it relates[6]. Prior to such approval, the responsible financial officer[7] of a relevant body must sign and date the statement of accounts, income and expenditure account and balance sheet, or record of receipts and payments, as the case may be, and certify that it presents fairly the financial position of the body at the end of the period to which it relates and the body's income and expenditure or properly presents receipts and payments, as the case may be, for that period[8].

As soon as reasonably possible after conclusion of an audit[9], or nine months from the day following the end of the period to which the accounts in question relate, whichever is the earlier, the statement of accounts or the other accounting statements[10] must be published, and kept available for purchase by any person for a reasonable sum[11]. Notice must be given by advertisement that the audit has been concluded and that the statement of accounts is available for inspection[12].

1 For the meaning of 'relevant body' see para 624 note 3 ante.
2 As to the statement of accounts see para 630 ante.
3 As to the income and expenditure account and balance sheet see para 631 ante.
4 As to the record of receipts and payments see para 631 ante.
5 Accounts and Audit Regulations 1996, SI 1996/590, reg 8(1).
6 Ibid reg 8(2).
7 For the meaning of 'responsible financial officer' see para 624 note 3 ante.
8 Accounts and Audit Regulations 1996, SI 1996/590, reg 8(3).
9 As to audits see para 653 et seq post.
10 As to other accounting statements see para 631 ante.
11 See the Accounts and Audit Regulations 1996, SI 1996/590, reg 9.
12 See ibid reg 16.

633. Accounts of best value authorities. Regulations made under the Local Government Act 1999 may make particular provision for the keeping of accounts by best value authorities[1].

1 See the Local Government Act 1999 s 23; and para 650 post. At the date at which this volume states the law no such regulations had been made.

634. Local financial returns. Every local authority[1] and the chairman of the parish meeting[2] of every parish not having a separate parish council must make a return to the Secretary of State[3] for each year ending on 31 March, or such other day as the Secretary of State may direct, of its income and expenditure[4] and, in the case of any billing authority, of the amount payable to the authority by way of council tax and non-domestic rates and of the amount paid to any other authority in pursuance of a precept or levy[5]. These returns must be in such form, must contain such particulars, must be submitted to him by such date in each year and must be certified in such manner as the Secretary of State may direct[6]. The Secretary of State must make an annual summary of the returns and information he receives under these provisions and lay the summary before both Houses of Parliament[7].

1 For these purposes, 'local authority' means:

(1) a billing authority or a precepting authority as defined in the Local Government Finance Act 1992 s 69 (see para 524 ante) (Local Government Act 1972 s 168(5)(a) (s 168(5) substituted by the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990, SI 1990/776, art 8, Sch 3 para 18; and the Local Government Act 1972 s 168(5)(a) further substituted by the Local Government Finance Act 1992 s 117(1), Sch 13 para 34(2));

(2) a combined fire authority as defined in the Local Government Finance Act 1988 s 144 (see para 530 ante) (Local Government Act 1972 s 168(5)(aa) (as so substituted; s 168(5)(aa) added by the Local Government Finance Act 1992 s 117(1), Sch 13 para 34(2); and amended by the Police and Magistrates' Courts Act 1994 s 93, Sch 9 Pt I));

(3) a levying body within the meaning of the Local Government Finance Act 1988 s 74 (see para 530 ante) (Local Government Act 1972 s 168(5)(b) (as so substituted; s 168(5)(b) amended by the Greater London Authority Act 1999 ss 109(1), 423, Sch 34 Pt I));

(4) a body as regards which the Local Government Finance Act 1988 s 75 applies (see para 530 ante) (Local Government Act 1972 s 168(5)(c) (as so substituted)); and

(5) a functional body within the meaning of the Greater London Authority Act 1999 (see LONDON GOVERNMENT) (Local Government Act 1972 s 168(5)(d) (as so substituted; s 168(5)(d) amended by the Greater London Authority Act 1999 Sch 34 Pt I)).

For the meaning of 'local authority' generally see para 24 ante.

2 For the meaning of 'parish meeting' see para 37 ante.

3 As to the Secretary of State see para 106 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see para 107 ante.

4 Local Government Act 1972 s 168(1)(a). In the case of the chairman of a parish meeting this is a return of the income and expenditure of the parish meeting: s 168(1)(a).

5 Ibid s 168(1)(b) (substituted by the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990, SI 1990/776, art 8, Sch 3 para 17; and amended by the Local Government Finance Act 1992 s 117(1), Sch 13 para 34(1)).

6 Local Government Act 1972 s 168(2). A direction may impose different requirements in relation to returns of different classes: s 168(2). If it appears to the Secretary of State that sufficient information about any of these matters has been supplied to him by a local authority, or by or on behalf of a parish meeting, under any other enactment, he may exempt the authority or chairman of the meeting from all or any of the requirements of s 168 so far as they relate to that matter: s 168(3).

7 Ibid s 168(4). The summary must cover any information supplied to him under any other enactment in consequence of which he has granted an exemption under s 168(3): s 168(4).

(9) BEST VALUE

635–652. Replacement of compulsory competitive tendering with best value requirements ... Guidance, orders and regulations.
Material relating to this part has been revised and published as part of the title LOCAL GOVERNMENT vol 69 (2009).

(10) AUDIT

653–700. The Audit Commission ... Publication of information by the Audit Commission.
Material relating to this part has been revised and published as part of the title LOCAL GOVERNMENT vol 69 (2009).

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